

103

THE IMMIGRATION AND NATURALIZATION SERVICE: A MANDATE FOR CHANGE

Y 4.G 74/7: IM 6/7

The Immigration and Naturalization...

HEARING

BEFORE THE

INFORMATION, JUSTICE, TRANSPORTATION, AND AGRICULTURE SUBCOMMITTEE

OF THE

COMMITTEE ON

GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

MARCH 30, 1993

Printed for the use of the Committee on Government Operations



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CONTENTS

Hearing held on March 30, 1993	Page 1
Statement of:	
Castillo, Leonel J., former Commissioner, Immigration and Naturaliza- tion Service	99
Condit, Hon. Gary A., a Representative in Congress from the State of California, and chairman, Information, Justice, Transportation, and Agriculture Subcommittee: Opening statement	1
Hankinson, Richard J., inspector general, U.S. Department of Justice	27
McNary, Gene, former Commissioner, Immigration and Naturalization Service	115
Muñoz, Cecilia, senior immigration policy analyst, National Council of La Raza	185
Ruthizer, Theodore, president, American Immigration Lawyers Associa- tion	161
Stein, Dan, executive director, Federation for American Immigration Re- form	202
Wilson, Richard J., coordinating committee on immigration law, Amer- ican Bar Association	144
Wortman, Don I., fellow, National Academy of Public Administration	70
Wray, Henry R., Director, Administration of Justice Issues, U.S. General Accounting Office	4
Yañez, Linda Reyna, directing attorney, immigration clinic, Harvard Law School	23
Letters, statements, etc., submitted for the record by:	
Antonovich, Michael D., supervisor, fifth district, board of supervisors, county of Los Angeles: Prepared statement	228
Castillo, Leonel J., former Commissioner, Immigration and Naturaliza- tion Service: Prepared statement	101
Hankinson, Richard J., inspector general, U.S. Department of Justice: Prepared statement	32
McNary, Gene, former Commissioner, Immigration and Naturalization Service: Prepared statement	122
Muñoz, Cecilia, senior immigration policy analyst, National Council of La Raza: Prepared statement	189
Ruthizer, Theodore, president, American Immigration Lawyers Associa- tion: Prepared statement	165
Stein, Dan, executive director, Federation for American Immigration Re- form: Prepared statement	208
Wilson, Richard J., coordinating committee on immigration law, Amer- ican Bar Association: Prepared statement	148
Wortman, Don I., fellow, National Academy of Public Administration: Prepared statement	72
Wray, Henry R., Director, Administration of Justice Issues, U.S. General Accounting Office: Prepared statement	7

APPENDIX

Material submitted for the hearing record	233
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THE IMMIGRATION AND NATURALIZATION SERVICE: A MANDATE FOR CHANGE

TUESDAY, MARCH 30, 1993

HOUSE OF REPRESENTATIVES,
INFORMATION, JUSTICE, TRANSPORTATION,
AND AGRICULTURE SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Gary A. Condit (chairman of the subcommittee) presiding.

Present: Representatives Gary A. Condit, Major R. Owens, Karen L. Thurman, Craig Thomas, Ileana Ros-Lehtinen, and Stephen Horn.

Also present: Shannon Lahey, Kathryn Seddon, and Joseph A. Shoemaker, professional staff members; Aurora Ogg, clerk; and Dan Naatz, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN CONDIT

Mr. CONDIT. The hearing by the Subcommittee on Information, Justice, Transportation, and Agriculture will now come to order. Good morning to all of you, and we welcome you here.

Recent headlines have called national attention to the Federal immigration policy and the role of the INS in executing that policy. Individuals residing here illegally have been implicated in bombings and killings. Prominent citizens have been employing undocumented residents in violation of the Immigration Reform and Control Act of 1986. These events raise serious questions about the INS, but they are just the tip of the iceberg.

Millions of Americans feel the impact of Federal immigration policy on a daily and continuing basis. Immigration has a profound effect on communities in California, Florida, Texas, New York, and Illinois, where a substantial number of legal and illegal immigrant populations reside.

The California Department of Finance estimates that there are 1.3 million undocumented immigrants living in California. Of the 2.9 million amnesty applicants granted residency under IRCA, 1.5 million reside in California.

In addition, more than 600,000 refugees admitted since passage of the Refugee Act of 1980 live in California. This puts the total legal and illegal immigrant population of California at approximately 3.4 million. California's legal and illegal immigrant population alone is greater than the entire populations of 24 States.

As a land of immigrants, we have a proud tradition of welcoming newcomers. Like America, my home State of California has benefited immensely from the contributions of newcomers. Yet there are mounting tensions that no one can ignore.

The State, the counties, and the cities lack the financial capability to absorb the costs associated with legal and illegal immigrants. The economic recession and high unemployment rates are of serious consequence, as is the failure of the Federal Government to pay the costs associated with Federal policy.

In carrying out its mission, or in its failure to do so, the INS contributes to these tensions and problems facing our communities. When the INS engages in a hot pursuit and individuals are killed, communities are outraged. When undocumented residents engage in criminal activities, the community is frustrated. When families are separated and face endless delays in being reunited, the community is divided.

Again, turning to my home State of California, undocumented residents represent nearly 12 percent of the State's prison population and an average of 9 to 11 percent of county prison population. These individuals are in jail for felonies, not because they reside there illegally.

It is of critical importance to millions of Americans that the INS carry out its mission effectively and efficiently. The INS is responsible for facilitating the entry of persons legally admissible as visitors and immigrants. It is also responsible for preventing unlawful entry and employment of those who are not admissible and apprehending or removing those who reside there illegally.

The agency has a long tradition of structural and management problems, and they need to be resolved. This is not a well-run organization. There have been countless audits, reports, and recommendations. Some have been implemented and some have not. With a new Attorney General, we have the opportunity to work together to bring about changes in the INS. We need some action.

This hearing is the first in a series of hearings that this subcommittee intends to hold on immigration issues. Today, we will be focusing on the operation of the INS and will hear from various witnesses who will bring forth their ideas to this subcommittee today.

Without objection, I would like to ask that all members be able to submit their statements for the record. At this time, I would like to turn to the ranking member, Mr. Thomas of Wyoming, and ask if he has any statements or comments that he would like to make at this time.

Mr. THOMAS. Thank you, Mr. Chairman. Just very briefly, and I'll try not to restate what you've said so well.

I do thank you for holding this hearing. I think this is a topic that all of us are interested in. Perhaps, living in California, you're a little closer to it than some of us in other places. Nonetheless, we're all affected by it.

I'm pleased with this subcommittee's attitude toward doing something. We're not here to defend or attack from a partisan standpoint, rather to look for something that can be done that's useful, and I appreciate that.

The Immigration and Naturalization Service has a very difficult task, of course, charged with a dual responsibility of enforcing laws to prevent illegal entry as well as facilitating legal admissions, and that's a tough task.

However, maintaining the integrity of our borders, most of us would say, is the highest priority; but I suggest to you that most Americans would say that it has not been held as the highest priority, nor is it seen as the highest priority in terms of activities. I would guess that that's part of the problem that we face.

As the chairman has already indicated, a number of studies have said that the INS has been plagued with weak management and inconsistent leadership. I don't know whether that is true, but it's often stated. If that's the case, how do we change that?

The perception, I think, is that all is not well. I don't know whether it's a matter of the need for statutory change, whether there's a need for better enforcement, if there's a lack of enforcement, whether there's a regulatory change needed. But I think, in sum, most of us would have to agree that the perception of our job of regulating immigration has not been satisfactory.

I hope today's hearings will give us greater insight and, Mr. Chairman, I look forward to them.

Mr. CONDIT. Thank you, Mr. Thomas. Mr. Owens, do you have an opening statement you'd like to make?

Mr. OWENS. No, Mr. Chairman, I have no opening statement.

Mr. CONDIT. Thank you. Mr. Horn.

Mr. HORN. Just some brief comments. I want to commend the Chair again for holding these hearings. I think they're essential. Too often, Congress has simply talked about the problem. I think now we have a chance to do something about the problem.

No. 1, it is not a Southwestern United States problem; it is an all borders of the United States problem. We have gone into the dual role of the INS, such as service and enforcement and the conflicts that might exist between the two.

I would hope, Mr. Chairman, besides dealing with such issues as reimbursement to the States—because the Federal Government cannot control the border, and it has proved that it cannot, under every administration, regardless of party, regardless of ideology. They need help.

We should be providing the help, not only for Border Patrol members, but for automation and the type of equipment they need to effectively do their job. Too often, as I've said earlier, I think we have talk, not action; and this is a chance to build a consensus.

Besides the counterfeit-proof Social Security card, which is 20 years overdue, we need to face up to the political terrorists that are coming into this country. That isn't the Southwest or the North or the East or the West. It's all of them, as they float into American society. We need to effectively deal with that before they board the plane in foreign countries.

I think we would, most of us, agree that the INS needs help and we should find out ways we can do it so you can work effectively.

Mr. CONDIT. Thank you, Mr. Horn. I appreciate it. I would like to ask the witnesses in the audience to bear with us just for one moment.

[Recess taken.]

Mr. CONDIT. I do appreciate your patience. I don't want to alarm anyone. This subcommittee has a policy of swearing in the witnesses. We've been doing it for a long time, and I'm a new chairman, and so I'm going to carry on the tradition. I would like to ask the witnesses to stand and be sworn in, please.

[Witnesses sworn.]

Mr. CONDIT. Thank you very much. Whatever you are comfortable with doing this morning. If you need to or want to read your statement, that's totally acceptable. Our preference would be if you would submit your statements for the record and maybe paraphrase your statements and then allow some time for questions. We would appreciate that very much.

I will start with Mr. Wray. Mr. Wray is the Director of the Administration of Justice Issues at the GAO. If you have any additional background that you want us to know about, about yourself, as we go down to each witness, please give us that information.

Mr. Wray.

STATEMENT OF HENRY R. WRAY, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, U.S. GENERAL ACCOUNTING OFFICE

Mr. WRAY. I'm relatively new to the Administration of Justice Issues. I have worked at GAO for a number of years in the general counsel's office, where I also hold an appointment. I'm sort of filling two hats at the moment. With your permission, Mr. Chairman, I would like to summarize my statement and submit the full statement for the record.

I'm pleased to be here today to discuss immigration policy and management issues and their impact on the operations of the Immigration and Naturalization Service. My testimony is based on our recent "Justice Issues" transition report and related GAO reports and testimony concerning INS. These reports and testimony are listed in the attachment to my full statement.

As long as political unrest and economic hardships persist throughout the world, people will continue to flee to the United States. Hence, the United States will continue to face complex and difficult immigration issues, such as who should be permitted to legally enter the country; what should be done to prevent aliens from entering illegally; and what should be done to remove aliens who are here illegally.

These issues are, for the most part, beyond the direct control of INS. However, INS also faces major management problems that are largely within the agency's control and that need its immediate attention. INS has to improve significant weaknesses in its allocation of resources, organizational structure, financial management, and information management.

In response to increased responsibilities and demands, INS's budget has grown substantially in recent years. Between 1975 and 1990, its budget more than tripled to over \$1 billion and its staff increased by 70 percent. In addition, INS is authorized to use fees it collects for many types of alien benefit applications and for inspections at airports and seaports.

The two main units within INS—enforcement and service—have quite different and almost opposite organizational objectives. The

enforcement unit is charged with keeping aliens from entering illegally and remaining in the country; the Service unit is responsible for facilitating the legal entry of aliens.

On the enforcement side, INS is confronted with the problem of trying to stop millions of aliens who attempt to enter the country illegally. In doing so, it faces many policy and operational issues, including: The feasibility and effectiveness of different approaches to, and improved technology for, improved border control; humanitarian concerns, such as equitable treatment of aliens of different nationalities and divided families; and cost considerations and tradeoffs, such as choosing between expenditures for detaining aliens or preventing their illegal entry.

INS Enforcement also is confronted with the almost impossible task of trying to locate and remove those aliens it believes should not remain here. INS does not have sufficient resources to detain the millions of aliens who are subject to detention and have been ordered deported.

Consequently, the aliens INS apprehends are generally released, pending resolution of their deportation hearings. Our past work indicates that many aliens who are released do not appear for their hearings. In fact, our work has shown more generally that the deportation component of immigration does not work well.

In our June 1992 report on INS detention efforts, we pointed out that INS treated aliens with similar types of violations or backgrounds differently. Whether INS detained an alien, and for how long, depended on the amount of available space where the alien was detained, the location of the alien's apprehension, and laws and administrative practices directed at certain nationalities.

INS needs strong leadership and management to balance the roles of enforcement and service and to overcome problems in the management of its enforcement efforts and of the services it provides to aliens.

Managing its competing enforcement and service functions means making hard decisions regarding resource allocation to ensure the agency's most effective operations.

For example, in 1992 testimony, we pointed out that, while Border Patrol funding almost doubled between fiscal years 1986 and 1991, the proportion of Border Patrol agent time actually devoted to border control activities decreased during this same period. Further, the Border Patrol's vehicles and electronic equipment were in poor condition at the four locations we visited.

Over the past decade, weak management systems and inconsistent leadership at INS have led to segmented, autonomous programs, each one of which tries to handle its own set of priorities and gives little attention to the interrelationships among the programs. INS's budget development process has been a problem. Its budgets are mainly compilations of program submissions with little accountability for funds or attention to agencywide priorities.

GAO has made a number of recommendations in recent years to address problems related to INS's program operations, financial management, and information management. Specifically, we've recommended that the Attorney General and the INS Commissioner determine what INS priorities should be, and then establish a

multiyear financial, resource allocation, and accountability strategy to achieve them.

We've also recommended that INS develop an enforcement strategy that clearly delineates responsibilities, addresses problems at its detention facilities, and improves the services it provides to aliens. Regarding financial and information problems, we've said that INS needs to develop a viable accounting and financial management system, improve controls over revenue and debt collection, and define its information needs.

All too often, in our opinion, the agency leadership has focused on short-term consequences of actions at the expense of addressing long-term problems. Therefore, we have recommended that the Attorney General and the Commissioner of INS develop a strategic vision about how INS should operate and build a consensus for it within INS, the Congress, and the affected groups in the country.

The Justice Department has begun to focus on management issues relating to INS. Achieving progress will be difficult, but we are encouraged by the Justice Department's commitment to bring about change. It is important that this commitment be sustained by the new administration in the years to come.

That concludes my prepared statement, Mr. Chairman.

[The prepared statement of Mr. Wray follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Information,
Justice, Transportation, and Agriculture
Committee on Government Operations
House of Representatives

For Release
on Delivery
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IMMIGRATION ISSUES

Making Needed Policy
and Management Decisions
on Immigration Issues

Statement of
Henry R. Wray
Director
Administration of Justice Issues



GAO/T-GGD-93-18

MAKING NEEDED POLICY AND MANAGEMENT
DECISIONS ON IMMIGRATION ISSUES

SUMMARY OF STATEMENT OF
HENRY R. WRAY
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES
U.S. GENERAL ACCOUNTING OFFICE

As the basic instrument of United States immigration policy, INS operates in an environment that features complex and difficult policy issues, such as (1) who should be permitted to legally enter the country, (2) what should be done to prevent aliens from entering illegally, and (3) what should be done to remove aliens who are here illegally.

INS is confronted with the problem of stopping millions of aliens trying to enter the country illegally. Preventing illegal entry raises several issues, including (1) the feasibility and effectiveness of different approaches to, and technologies for, improved border control; (2) humanitarian concerns, such as equitable treatment of aliens of different nationalities and divided families; and (3) cost considerations and trade-offs, such as choosing between alien detention and prevention of illegal entry.

In removing aliens from the country, INS is confronted with the almost impossible task of trying to locate and remove those aliens whom it believes should not remain here. Proposals to more effectively remove deportable aliens also raise difficult issues, some of which involve their rights to certain constitutionally based procedural protections.

The agency's task is particularly complicated because many immigration policy issues are beyond its control. However, INS also faces serious management problems that it can and must address.

Over the past decade weak management systems and inconsistent leadership at INS led to segmented autonomous programs, each of which tried to handle its own set of problems and gave little attention to the interrelationships among programs. Without coherent overall direction and basic management reforms, the organization has been unable to effectively address changing enforcement responsibilities and longstanding service delivery problems.

In previous reports, GAO recommended that the Attorney General and the INS Commissioner determine what INS priorities should be and then establish a multiyear financial, resource allocation, and accountability strategy to achieve them. Also, GAO recommended that INS develop an enforcement strategy that clearly delineated responsibilities, addressed problems at its detention facilities, and improved the services it provides to aliens. Regarding financial and information problems, GAO said that INS needs to develop a viable accounting and financial management system, improve controls over revenue and debt collection, and define its information needs.

All too often, in GAO's opinion, the focus of agency leadership has been only on the short term. Focus on the short-term consequences of actions has too often resulted in serious long-term problems. INS' problems are too longstanding to allow it to continually ignore the fundamental need to develop a strategic vision about how the agency should operate. Therefore, GAO recommended that the Attorney General and the Commissioner of INS begin the process of developing this vision and then build a consensus for it both within INS, as well as with Congress and affected groups in the country.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss (1) needed immigration policy and management decisions and (2) their impact on the operations of the Immigration and Naturalization Service (INS). My testimony is based on the immigration issues raised in our Justice transition report--Justice Issues (GAO/OCG-93-23TR, Dec. 1992)--and related GAO reports and testimony. Attached is a list of these reports and testimony.

As long as political unrest and economic hardships persist throughout the world, people will continue to flee to the United States. Hence, the United States will continue to face complex and difficult immigration issues, such as

- who should be permitted to legally enter the country,
- what should be done to prevent aliens from entering illegally,
and
- what should be done to remove aliens who are here illegally.

These issues are, for the most part, beyond the direct control of INS. Also, the difficulty of INS' task is compounded by a lack of consensus on the part of both Congress and the American people concerning immigration policy and its enforcement.

We recognize that the resolution of these issues and building consensus on immigration policy will take time. However, the major management problems that have plagued INS need immediate attention. INS management has to improve significant weaknesses in its allocation of resources, organizational structure, financial management, and information management. These management problems must be addressed now. Responding to them should not be delayed pending resolution of the broader policy issues.

BACKGROUND

From without and from within, the United States is pressured to allow refugees to enter the country legally to escape conditions in other countries. As civil unrest, poor economic conditions, and natural disasters occur in other countries, refugees look to this country as a safe haven.

INS is basically an instrument of the United States' immigration policy. Its overall mission is to promote and allow only legal entry and travel to the United States. However, the two main units within INS--enforcement and service--have quite different, almost opposite, organizational objectives. One unit is charged with keeping aliens from illegally entering the country; the other unit is responsible for facilitating their legal entry.

In response to increased responsibilities and demands on INS, its budget has grown. Between 1975 and 1990, INS' budget more than tripled to over a billion dollars and the number of staff increased by 70 percent. In addition, INS is authorized to use fees it collects for many types of alien benefit applications, such as naturalization, and for inspections at airports and seaports.

IMMIGRATION POLICY DECISIONS NEEDED

Congress and the administration need to resolve the following immigration policy issues.

Who Should Be Permitted Entry?

When conditions in other countries deteriorate, the United States has traditionally responded to the plight of the refugees by permitting their entry. However, our country's response has been on a case-by-case basis. As a result of responding to specific international crises, INS often operates in a reactive mode that can appear, at times, to be inconsistent.

For example, the Foreign Operations Appropriations Act for fiscal year 1990 (Public Law 101-167) required the executive branch to provide enhanced opportunity for certain Soviets to qualify for

refugee status.¹ In anticipation that some Soviet citizens would be denied refugee status, the Attorney General extended an offer of public interest parole² to all Soviets found ineligible for refugee status. In response to developments in East European countries, the United States pledged to move all East Europeans approved for resettlement before July 1, 1989, to the United States by the end of December 1989.

As a result of a 1979 Memorandum of Understanding between the United Nations High Commissioner for Refugees and the government of Vietnam, a program was established to provide a safe and legal means for people to leave Vietnam openly rather than clandestinely by boat. Under the conditions of the program, Vietnamese had the opportunity to enter the United States. Also, the Attorney General is authorized to grant temporary protected status under certain conditions to nationals from countries with social or political unrest. In our June 1992 report,³ we pointed out that the nationals from five countries--El Salvador, Kuwait, Lebanon, Liberia, and Somalia--were granted this status.

¹This included Jews, Evangelical Christians, Ukrainian Catholics, and Ukrainian Orthodox Church members.

²Parole is a procedure used to temporarily admit an excludable alien into the United States for emergency reasons or when in the public interest.

³Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992).

What Should Be Done To Prevent Illegal Entry?

INS is confronted with the problem of trying to stop millions of aliens who attempt to enter the country illegally. Some of these aliens smuggle contraband such as drugs. Immigration policy related to the prevention of illegal entry is affected by such issues as the following:

- the economic disparities between United States and other nations, such as Mexico, which cause illegal immigration;
- conflicts between trade facilitation objectives calling for efficient flow of goods across the border and immigration control needs calling for better documentation and closer scrutiny of cross-border traffic;
- the reliance of U.S. employers on inexpensive labor, legal and illegal, from other countries; and
- the reliance of the other countries' economies on money earned in the United States and returned and spent in those countries.

Other issues include (1) the feasibility and effectiveness of different approaches to, and technologies for, improved border control; (2) humanitarian concerns, such as equitable treatment of aliens of different nationalities and divided families; and (3)

cost considerations and trade-offs, such as choosing between expenditures for detaining aliens or preventing their illegal entry.

What Should Be Done To Remove Aliens Illegally Here?

In removing aliens from the country, INS is confronted with the almost impossible task of trying to locate and remove those aliens it believes should not remain here. INS does not have sufficient resources to detain the millions of aliens who are subject to detention or who have been ordered deported. Consequently, aliens INS apprehends are generally released pending the resolution of their deportation hearing. Our past work indicated that aliens who were released did not appear for their hearings. Since INS did not have sufficient resources to reapprehend them, they remained here illegally.

In our October 1989 report on deporting and excluding aliens from the country,¹ we pointed out problems INS had in deporting aliens. For example, 27 percent of the aliens had not appeared for their scheduled deportation hearings, which effectively stopped resolution of their deportation cases. While their nonappearance may be attributed in some instances to INS' failure to notify them of the time and place of their hearings, it may also have been due

¹Immigration Control: Deporting and Excluding Aliens From the United States (GAO/GGD-90-18, Oct. 26, 1989).

to the general lack of sanctions for failing to appear. In fact, our work has shown the deportation component of the immigration policy does not work well. If it is to be an effective component, it must be improved. But deciding how far to go in terms of strengthening the deportation process is related to the issue of how Congress wants the immigration laws to be enforced.

In our June 1992 report on INS detention efforts,⁵ we pointed out that INS treated aliens with similar types of violations or backgrounds differently. For example, some excludable⁶ aliens were released within a few days, while others remained in detention for extended time periods. Whether INS detained an alien and for how long depended on the amount of available space where the alien was eventually detained, the location of the alien's apprehension, and laws and administrative practices directed at certain nationalities. For example:

-- INS detained Haitians who tried to enter the country for extended periods of time. At INS' Krome detention facility in Florida, the average length of time Haitians in our sample had already spent in detention was 101 days, while Indians had been detained an average of 69 days.

⁵Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992).

⁶Excludable aliens are those persons to whom INS denies admission to the country.

-- INS detained Chinese aliens as they tried to enter the country in New York. Limited detention space in New York resulted in INS transferring some of these aliens to its Denver facility. The Chinese in our sample had spent an average of 11 days in detention in New York compared to 86 days for those transferred to Denver. The difference in detention time was related to the location of their detention rather than to their behavior or the factors surrounding their individual cases.

-- INS detained excludable and deportable aliens for different lengths of time. Excludable aliens who were detained had been detained an average of 56 days. Deportable aliens who illegally entered the country and were subsequently apprehended for noncriminal behavior had been detained an average of 47 days.

Congress and the Administration Need to
Address Immigration Policy Issues

Efforts to permit entry of refugees, to tighten the nation's borders, and to expedite the expulsion of illegal aliens must take into account the plight of refugees escaping intolerable conditions and their rights to constitutionally based protections. They also must deal with such complex and sensitive issues as potential strains in our relationships with other nations, humanitarian concerns relating to equitable treatment of aliens, and difficult budgetary trade-offs.

NEED FOR STRONG LEADERSHIP AND MANAGEMENT

In addition to these difficult policy issues requiring the attention of Congress and the administration, INS needs strong leadership and management to

-- balance the roles of enforcement and service and

-- overcome problems in the management of its enforcement efforts and of the services that it provides to aliens.⁷

Managing its competing enforcement and service functions means making hard decisions regarding resource allocation to ensure the agency's most effective operations. For example, in our August 1992 testimony,⁸ we pointed out that Border Patrol funding increased 82 percent between fiscal years 1986 and 1991--from \$164 million to \$299 million. However, the proportion of total Border Patrol agent time devoted to border control activities decreased from 71 percent to 60 percent from 1986 to 1991. Further, the Border Patrol's vehicles and electronic equipment were in poor

⁷Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (GAO/GGD-91-28, Jan. 23, 1991); Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (GAO/IMTEC-90-75, Sep. 27, 1990); and Financial Management: INS Lacks Accountability and Controls Over Its Resources (GAO/AFMD-91-20, Jan. 24, 1991).

⁸Border Patrol: Southwest Border Enforcement Affected by Mission Expansion and Budget (GAO/T-GGD-92-66, Aug. 5, 1992).

condition at the four locations we visited. Without suitable vehicles and electronic detection devices, the Border Patrol sometimes did not patrol areas known for high levels of illegal entry and drug smuggling.

Over the past decade weak management systems and inconsistent leadership at INS led to segmented autonomous programs, each of which tried to handle its own set of problems and gave little attention to the interrelationships among programs. Without coherent overall direction and basic management reforms, the organization has been unable to effectively address changing enforcement responsibilities and longstanding service delivery problems.

INS's budget development process has been chaotic. Its budgets are mainly compilations of program submissions with little accountability for funds or attention to agencywide priorities. Although INS is addressing some of these management problems, action is still needed to improve program enforcement and service. For example, even though aliens pay fees to cover processing costs, they still have to wait months to have their applications processed. While expenditures nearly doubled between fiscal years 1986 and 1989, overall processing times have not improved, and in key INS districts processing times substantially exceeded INS' criteria. Recently, INS has improved its processing times for some alien applications.

We have made a number of recommendations to address the problems related to INS' program operations, financial management, and information management. Specifically, we recommended that the Attorney General and the INS Commissioner determine what INS priorities should be and then establish a multiyear financial, resource allocation, and accountability strategy to achieve them. Also, we recommended that INS develop an enforcement strategy that clearly delineates responsibilities, addresses problems at its detention facilities, and improves the services it provides to aliens. Regarding financial and information problems, we said that INS needs to develop a viable accounting and financial management system, improve controls over revenue and debt collection, and define its information needs.

Even though the recommendations need to be implemented to help solve INS' problems, we are not confident that acting on them will result in a more effective INS. The Attorney General and the Commissioner of INS must articulate a vision of how INS should operate to effectively carry out its role of implementing the Nation's immigration policy. The approach to managing INS has been too ad hoc over the years. Specific improvements must be undertaken within a broad strategic context about how the agency should operate.

All too often, in our opinion, the focus of agency leadership is only on the short term. Focus on the short-term consequences of

actions has too often resulted in serious long-term problems. INS' problems are too longstanding to allow it to continually ignore the fundamental need to develop a strategic vision about how the agency should operate. Therefore, we recommended that the Attorney General and the Commissioner of INS begin the process of developing this vision and then build a consensus for it within INS, as well as with Congress and affected groups in the country. The exact means that the Attorney General and the Commissioner use to develop a strategic context for INS to operate within should be left to them. But there must be an explicit commitment by the leadership to seriously engage in the effort if long-term improvements in INS are to be realized.

The Office of the Attorney General has begun to focus on management issues relating to INS. New people have been recruited for key positions, and a renewed effort has been made to deal with the long-term problems that exist at INS. Achieving progress will be difficult, but we are encouraged by the Justice Department's commitment to bring about change. It is important that this commitment be sustained by the new administration in the years to come.

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This concludes my prepared statement. I would be pleased to answer any questions the Subcommittee may have.

APPENDIX

APPENDIX

RELATED GAO PRODUCTS

Border Patrol: Southwest Border Enforcement Affected by Mission Expansion and Budget (GAO/T-GGD-92-66, Aug. 5, 1992)

Financial Management: INS Lacks Accountability and Controls Over Its Resources (GAO/AFMD-91-20, Jan. 24, 1991)

Immigration Control: Deporting and Excluding Aliens From the United States (GAO/GGD-90-18, Oct. 26, 1989)

Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (GAO/IMTEC-90-75, Sep. 27, 1990)

Immigration Control: Immigration Policies Affect INS Detention Efforts (GAO/GGD-92-85, June 25, 1992)

Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (GAO/GGD-91-28, Jan. 23, 1991)

Justice Issues (GAO/OCG-93-23TR, Dec. 1992)

Refugees and U.S. Asylum Seekers from Central America (GAO/T-NSIAD-89-16, Mar. 9, 1989)

Refugees from Eastern Europe (GAO-T/NSIAD-90-7, Nov. 2, 1989)

Refugee Program: The Orderly Departure Program From Vietnam (GAO/NSIAD-90-137, Apr. 11, 1990)

Soviet Refugees: Processing and Admittance to the United States (GAO/NSIAD-90-158, May 9, 1990)

Copies of GAO reports cited in this statement are available upon request. The first five copies of any GAO report are free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

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Gaithersburg, MD 20877

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Mr. CONDIT. Thank you, Mr. Wray. We will get back to you in a few minutes. We're delighted to have Ms. Yañez here, directing attorney of the immigration clinic for Harvard Law School. Thank you.

**STATEMENT OF LINDA REYNA YAÑEZ, DIRECTING ATTORNEY,
IMMIGRATION CLINIC, HARVARD LAW SCHOOL**

Ms. YAÑEZ. Thank you. Mr. Chairman, members of the committee, I thank you for the opportunity to address this subcommittee. Due to the short notice of my requested appearance, I will be submitting comments subsequent to today's hearing. My name is Linda Reyna Yañez, and I am a clinical instructor at Harvard Law School and the director of the Harvard Immigration Clinic.

Our treatment of newcomers defines us as a Nation and affects the moral force of our leadership in international affairs. Through our immigration system, we admit family sponsored immigrants and workers with needed skills. These immigrants contribute to America's economic vitality by working hard, paying taxes, and helping build strong communities.

Nativists assert and the public often misperceives that immigrants compete with citizens for jobs and resources. As a Department of Labor study, among others, has concluded, the presence of immigrants in the U.S. labor market benefits employers, consumers, and the U.S. international economic position.

While the country benefits from immigrants and the Federal Government receives their tax dollars, the health and education costs of resettling new arrivals are sometimes borne disproportionately by certain State and local governments. Without the equalizing effect of Federal financial assistance to those communities, we may witness a retrenchment in local governmental and private support for newcomers.

Some political leaders, unable to acknowledge the complexity of urban poverty or crime, scapegoat immigrants. Similarly, the language needs of newcomers are fertile ground for demagoguery and claims that American culture is being undermined. Yet bilingual services constitute only transitional support and do not constitute any reluctance by immigrants to be English literate.

Internationally, our credibility has been severely damaged by the forcible repatriation of Haitian refugees. As attacks on immigrants and ethnic minorities increase around the world, the United States must reassert its moral force at home and abroad. Providing protection to individuals fleeing from overseas and ensuring fair procedures and nondiscrimination at home is not a threat to our national sovereignty. It is a reaffirmation of our origins and of our richly diverse American democracy.

The INS, as currently managed and organized, is incapable of fulfilling its daunting mission or of responding to the myriad challenges that face it. Despite the loyalty and dedication of many committed employees, the agency as a whole lacks direction, coordination, and efficiency.

While some divisions are perennially underfunded, others engage in needless expenditures, and the entire agency is devoid of serious financial controls to identify waste and inefficiency, to make in-

formed cost-benefit decisions, or to distinguish between successful and unsuccessful programs.

The management and supervisory structure of the agency, long a subject of criticism by external reviewers, government consultants, and the General Accounting Office, creates conflicting loyalties, a lack of responsiveness by officers in the field, and wasteful allocation of limited resources.

For example, each of the agency's 33 district offices and 21 Border Patrol sectors is composed of distinct units, each of which reports to both the district director or Border Patrol sector chief and their respective central office section.

Similarly, INS districts and Border Patrol sectors overlap geographically and have duplicative investigatory authority, thereby creating continual jurisdictional disputes. As a result, no one exercises consistent authority or unitary control.

Moreover, the senior, politically appointed layer of management lacks both substantive knowledge and adequate managerial competence. As a result, implementing policy, even once it is set, is difficult if not impossible.

District directors are largely autonomous, despite a paper reorganization designed to streamline the bureaucratic structure and to vest more effective authority at INS headquarters.

The INS budgetary and management deficiencies produce demoralized career personnel, careless or abusive treatment of its clientele, inefficient use of resources, multifarious litigation against the agency, lack of coordination among program units, crisis response in lieu of proactive planning, and a negative image of the United States to the millions of noncitizens whose first and perhaps most-lasting impression of the United States comes from experience with the INS.

Most obviously in relation to the Haitian refugee issue, but also in regard to other impending issues of international dimension, the INS is incapable of providing sound guidance or of smoothly implementing a policy, once it is adopted. Similarly, the agency's reputation and conduct have engendered the mistrust and hostility of the civil rights, human rights, Latino, and business communities, to the detriment of the Justice Department as a whole.

These problems must be addressed vigorously, promptly, and effectively, to demonstrate, in words as well as with deeds, a determination to resurrect the reputation, integrity, and fairness of the Department of Justice. The INS is a multifaceted agency with responsibilities in disparate and arguably, conflicting areas. The agency's emphasis on its significant enforcement duties risks skewing its implementation of other equally important tasks.

The feasibility of long-term change and improvement in the agency may be dependent on separating its Enforcement and Service functions. A comprehensive study should be undertaken to assess options for bifurcating the agency or otherwise restructuring its component parts.

The Department of Justice needs to remain intimately involved with overseeing the operations and programs of the INS while it seeks to redefine its mission and promote a new immigration agenda. The Department should designate a senior person within the

Office of the Deputy Attorney General who is knowledgeable about immigration issues.

The person should support and guide the agency, and she should promote the new agenda within the agency, in the Department, on Capitol Hill, and before the public. There must be clear lines of authority and supervision from the designated senior person in the Department over the agency to ensure the mandate for change.

Political asylum is an issue that I think has been very much in the news lately. A look at INS statistics for fiscal year 1992 shows that publicized media reports about the asylum process are greatly exaggerated. Ten countries accounted for 78 percent of the new asylum filings, with each of these countries generally considered to be refugee producing or undergoing civil turmoil.

The stakes are high in asylum determinations. Asylum officers have a difficult job determining which of many applicants qualify for political asylum. They must interview applicants from diverse cultures with a broad range of educational backgrounds who may have had traumatic recent experiences with governmental officials in their homelands and who may lack legal representation, since there is no right to counsel at government expense in administrative immigration proceedings.

These circumstances may account for many of the allegedly unsubstantiated claims. Further limiting the procedural protection for asylum seekers will increase the risk of denying asylum to those who legitimately fear persecution in their homelands.

Although the Supreme Court has held that applications for political asylum must be decided on a case-by-case basis, in the 12 years since Congress passed the Refugee Act of 1980, ideological and foreign policy concerns have dominated political asylum adjudications. In a recent settlement, the United States acknowledged that ideology and foreign policy have no place in determining whether an applicant has a well-founded fear of persecution; but such factors continue to permeate the political asylum process.

Questionable management practices have contributed to a 50 percent increase in the backlog of unadjudicated asylum claims. Although the INS adopted staffing models for the seven asylum offices based, in large part, on the number of backlogged cases in each region, INS has interviewed very few applicants in the backlog, if any.

Instead, INS made it a priority to interview cases filed most recently. Because it allocated insufficient resources for such critical functions as opening mail and entering cases into its data base, the asylum office's initial productivity was low.

Suggestions for reducing the backlog without sacrificing fairness include: Increase the number of asylum officers and the resources available to adjudicate asylum claims; provide legal residence for the 230,000 American Baptist Church's class members and for the 11,000 Haitians paroled into the United States from Guantanamo Naval Base; and a recommendation that doesn't go directly to Congress, but to the administration—to train members of President Clinton's new volunteer service corps to be advocates for asylum seekers and to work with existing nongovernmental agencies to prepare requests for asylum.

Legislation that may be likely to be introduced in the 103d Congress includes an amendment to the Immigration and Nationality Act authorizing summary exclusion of persons seeking entry into the United States. During the 102d Congress, legislation was introduced that would have given low-level INS employees untrained in refugee law the final authority to exclude asylum seekers who arrive without proper documents. Unlike usual asylum procedures, these asylum seekers would be denied the right to counsel as well as any administrative or judicial review.

Other legislation introduced in the last Congress proposed inspecting international travelers at major airports abroad and barring those persons who appear to be excludable from boarding their flights. The purpose of this legislation was to combat visa fraud and alleviate lengthy processing delays for international travelers in U.S. airports.

However, the process proposed by the legislation would deprive persons, including legal residents and refugees, of any legal procedures by which to assert their right to enter the United States or to challenge their exclusion. While fraud prevention and expeditious processing are worthy goals, summary proceedings that sacrifice important due process rights, particularly where legal residents and refugees are denied protections, are ill advised.

The INS has many hardworking, dedicated, and loyal employees whose best efforts are frustrated by institutional inertia and the culture of the agency. There are, however, also a significant number of INS employees who are insensitive to the diversity of the public they serve and respond with hostility to legitimate inquiries and requests from the public. They communicate a sense of suspicion and animosity, suggesting they believe every applicant is seeking to subvert the legal process or circumvent legal requirements.

As a result, the agency frequently engenders an adversary environment that is neither necessary nor appropriate. There is an urgent need to redirect the agency, appoint leadership that is strong, motivated, directed, and aware of the needs of diverse clientele that they serve.

The leadership must articulate concrete goals and objectives, adopt a budget process that is designed to serve those goals, establish review procedures to determine whether the fiscal and management goals are being met, and implement an inclusive management style that encourages career employees to participate enthusiastically and that rewards such participation.

I would urge you not to rush into legislation based on sensational media reports. A more rigorous analysis should precede any legislation that might abrogate U.S. treaty rights and limit the rights of genuine asylum seekers. Unfortunately, the facts of the asylum system would not generate high ratings or sell newspapers. The facts would reveal, however, that cross-cultural issues, misinformation, and poor translation may affect process more than fraudulent applications.

Thank you. I will be happy to answer any questions.

Mr. CONDIT. Thank you very, very much. We do appreciate very much you being here today. I know you came on short notice and I know the difficulty that you had to go through to get here. We

appreciate very much your testimony. Your views are very important to this subcommittee and very important to this country, and we appreciate you being here very much.

Ms. YAÑEZ. Thank you.

Mr. CONDIT. Mr. Hankinson, who is the inspector general of the Department of Justice. Sir.

STATEMENT OF RICHARD J. HANKINSON, INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HANKINSON. Good morning, Mr. Chairman and members of this subcommittee. I am pleased to appear before this subcommittee again. I note, also, there are a number of new members on this subcommittee, and I look forward to working with all of you on issues regarding the Department of Justice.

You've asked me to appear before the subcommittee to testify about the significant problems that may exist in INS and to talk about ways to remedy these problems, and to offer organizational and restructuring alternatives or solutions. I must confess that I doubt any person can fully meet such an ambitious request in the few weeks that were available to prepare for this hearing.

For an inspector general, however, the task becomes doubly difficult because the office imposes on the incumbent an obligation to choose one's words carefully, to refrain from groundless speculation, and to demonstrate, with care and professionalism, that there is a basis for each recommendation or conclusion that might be offered.

At the same time, I appreciate the desire of this subcommittee for a candid overview and sharing of thoughts about INS that extends beyond the formalities of individual audit and inspection report findings.

When looking at INS, the Department of Justice's annual report under the Federal Managers' Financial Integrity Act is particularly illuminating. In its report dated December 31, 1992, the Department listed 17 material weaknesses, almost half of which involved INS.

As you consider the significant problems in INS, you can safely start with this list: Automated accounting and ADP planning; financial management training; automated information systems planning; immigration inspector training; ineffective security program; delivery bonds; overtime management—use of 1931 act overtime; procurement improvements in INS.

In addition, listed as a high risk area/material nonconformance are: Supervision of fee accounts and financial management systems.

These last two items are particularly troubling because they reflect on INS's ability to manage properly the almost half a billion dollars it receives annually in fee revenues and the \$1 billion it gets from Congress as annual appropriations.

In organizing my discussion, I have combined issues into five topics: INS as a second-class citizen; INS management of its employees; INS management of its resources; INS management of its laws and policy; and, finally, a brief commentary on the reorganization proposals that have haunted INS for three decades or more.

INS as a second-class citizen. One of the ways my office prepared for this hearing was to gather about 15 of our senior advisors, investigators, inspectors, auditors, all of whom had worked in INS or on INS projects. When we polled the group, we got an unanimous opinion that INS has an "institutional inferiority complex," and an employee morale problem. One example of this is the INS employee perception that the Department has, for years, underfunded INS.

I think the morale problem is real. I trust this consensus coming from the group that knows INS. Nevertheless, I wanted to see if there was any truth to the perception that the Department gives INS less than its fair share. We found that INS appears to have kept up with or outpaced the Department in its budget growth, principally because it has drawn increasingly on user fees to fund its operations.

This comparison does not reflect whether INS's budget has kept up with increases in its duties, responsibilities, and workload, but it does show that INS at least has received its fair share of the Department's budget and has outpaced the Department in a number of instances.

In sum, while I cannot determine whether INS got enough money to do its job, it does appear that it got its fair share and was not required to suffer shortages more than the rest of the Department.

The INS management of its employees. Of its total budget, INS spends two-thirds of its appropriated funds for employee salary and benefits. Its personnel are INS's most important resources. How well it manages them is critical to the smooth operation of the agency.

From my perspective, employee corruption is an important symptom of INS employee management philosophy and effectiveness. At the outset, I want to emphasize that only a tiny fraction of INS employees are corrupt. But the opportunities for corruption are tremendous.

INS employees guard access to the United States—the entry of drugs and aliens across our border and into this country. INS employees have the ability to get and sell another precious commodity: The documentation that will allow an alien to stay in the United States and to gain employment.

A border crossing card "sells" for \$325 on the average. A temporary resident permit sells for about \$2,300. A green card sells for an average of \$5,600. Last year, we successfully concluded cases in which almost \$1 million was paid in an effort to corrupt INS employees.

A year or so ago, my office undertook a study of INS corruption. One of the more practical writings that summarized the problem and had concrete suggestions on how to deal with it was a study done by the International Association of Chiefs of Police.

Distilled to essentials, the IACP study recommended the following: Select new hires carefully. Screen them—conduct background checks, use drug tests. Train them. Supervise them. Require accountability—take disciplinary action for misconduct.

The answers the IACP study provided may appear to be disappointingly simple and obvious. Yet, these answers fit fairly well with what we know of INS: It is often indifferent when it comes

to screening its employees and training them; much of their work is unsupervised; and administrative discipline is sometimes—and that's using the word lightly—haphazard. Fundamentally, what the IACP study seemed to be saying was that sound management techniques with respect to one's employees are also the best anticorruption measures.

I want to comment on one of these elements—employee supervision. INS is an agency which empowers the vast majority of its employees to make critical decisions, but devotes uncertain amounts of time to supervising their work.

An inspector at a land port of entry can authorize entry of a truckload of drugs into the United States with a wave of the hand. Most actions by examiners, adjudication personnel, legalization officers, and the like, are not reviewed.

Virtually any employee can enter INS's automated data base and make changes in its alien record systems. Passwords are freely exchanged and rarely updated. Moreover, until very recently, there was virtually no way to track either those who entered INS's automated data system or what they did once they got there.

In our audits, we found numerous errors in the processing and handling of documents. A common theme was the inadequacy of independent and supervisory reviews. INS's laws are complicated and constantly changing, which makes it imperative that these reviews are accomplished.

Let me speak briefly of INS's management of its resources. This is potentially a very huge topic.

In sum, INS lacks methods to collect information, to sort it, to analyze it, to verify it; and it lacks the coordination and planning capabilities to use this information, even when it's available. It lacks the infrastructure—and this is an important issue here—it lacks the administrative infrastructure necessary to support sound management, budget planning, budget execution, information management, detention space forecasting, and the like.

I think the single most important piece of advice that anyone could give to the Congress, the new Attorney General, or to the next Commissioner of INS, would be that whatever the temptations, the shortfalls elsewhere, the pressures of the moment, do not neglect funding and nurturing of the support infrastructure.

Let me speak also briefly of INS's management of its laws and policy. In the "Immigration Management Audit Report," GAO was particularly critical of the lack of clear policy direction from INS headquarters.

I also recall reading about a study by the Rand Corp. in which it was disclosed that the average amount for an employee sanction differed greatly depending on which INS region enforced a violation.

Finally, the recent news reports describing how any alien claiming asylum can obtain entry into the United States and a work permit, regardless of how patently transparent the claim, suggests that our Nation's immigration law and policy could use some review.

Our immigration laws and policies have become as complicated as our tax code. Such complexities work an injustice to the aliens, to whom English is not a native tongue, for how can they know

that they have the rights for which they may be eligible? It puts a heavy strain on INS employees as well, for it must be very difficult for those low-graded employees to keep up with the changing laws.

Therefore, I urge consideration of an effort to reform and simplify our immigration law in order to achieve three purposes: One, so aliens will have a better chance of securing what rights or entitlements they may be eligible for; two, to give INS employees a simpler matrix of rules because doing so will enable them to process benefit applications in less time and will increase the likelihood that the processing will be performed with uniformity and fairness; and three, to come up with fairer ways of dealing with illegal entrants that will preclude them from remaining in the United States simply by default.

I will also speak about the reorganizational proposals. Much has been written about the so-called schizophrenic persona of INS—that it suffers from some dysfunctional marriage of two incompatible responsibilities: To keep aliens out of the country, or the “enforcement” role; but to serve and assist other aliens to enter and to obtain residency and citizenship, the “service” role. The correspondent role that the U.S. Customs Service fills has also been noted.

In consequence, it seems that there always has been in circulation one or another proposal to reorganize or restructure both the agencies and their responsibilities. I would suggest that we be wary about such proposals, for a couple of reasons.

First, many organizations appear to have multiple and even contradictory duties. IRS must aid and advise the taxpayer, while hunting out and prosecuting the tax cheat. The Food & Drug Administration must regulate the industry, encourage new developments and, yet, guard against unsafe, inadequately tested medicines.

Throughout the government you will find agencies that must simultaneously be both cheerleader and policeman for some industry or constituency. Sound management practices and structures should support one goal, or another, or both.

If I have a solid payroll system, it shouldn't matter whether I use it to pay a Border Patrol agent or an immigration examiner. If I have a “deplorable” payroll system, it is not going to get better by separating the two employees into two different organizations. Hence, I think it is important to stay focused on what might be accomplished, and what might not change at all, before beginning a reorganization.

My second observation about a realignment of INS functions is that we could learn something from history. None of these proposals has been adopted so far. Something keeps getting in the way. We can waste an awful lot of energy trying to implement a reorganization that should be spent on basic improvements.

These proposals are expensive; they distract employees from virtually any other work; and the marriage of new structures, jobs, personnel, equipment, and the like requires that the underlying responsibilities and functions be deferred.

In conclusion, Mr. Chairman, I have entered my full statement into the record. I want to say here, also, that I have discussed a

number of studies that have been critical of INS. I think we ought to remember that there are legions of employees who are fighting to stem an enormously strong tide of humanity that desperately wants to reach our Nation's shores, and that these INS employees are working bravely and in difficult conditions. They deserve our support. We must give them the tools with which to do their jobs and we must give them the attention that this difficult task requires.

I thank you for this subcommittee's interest in that challenge, and would be pleased to attempt to answer any questions that you might have.

[The prepared statement of Mr. Hankinson follows:]

Statement

of

Richard J. Hankinson
Inspector General
Department of Justice

Before the

Subcommittee on Information, Justice,
Transportation and Agriculture

of the

Committee on Government Operations

United States House of Representatives

March 30, 1993

Good Morning Mr. Chairman.

I am pleased to appear before this Subcommittee again. Mr. Chairman, I congratulate you on your new leadership position with this Subcommittee. I note also that there are a number of new members, and I look forward to working with each of you on Subcommittee issues relating to the Department of Justice.

SOME COMMENTS ON THE NATURE OF THIS HEARING

You have asked me to appear before the Subcommittee to testify about the significant problems that may exist in INS, and to talk about ways to remedy those problems, to offer organizational and restructuring alternatives or solutions that might work, and to share with you recommendations that I might give to the new Attorney General. I must confess that I doubt that any person can fully meet such an ambitious request in the few weeks that were available to prepare for this hearing. For an Inspector General, however, the task becomes doubly difficult because the office imposes on the incumbent an obligation to choose one's words carefully, to refrain from groundless speculation, and to demonstrate, with care and professionalism, that there is a basis for each recommendation or conclusion that might be proffered.

At the same time, I appreciate the desire of this Subcommittee for a candid overview and sharing of thoughts about INS that extends beyond the formalities of individual audit and inspection report findings. After all, these reports are already a matter of public record; to some extent, they are yesterday's news. The benefit that today's hearing offers is the opportunity to extend the range of our discussion and consideration beyond the four corners of the various reports that have been written about

the Immigration & Naturalization Service. So, I shall try to meet the spirit of this objective even though my remarks may occasionally have to be qualified.

SOME BACKGROUND INFORMATION

It may help to start with some very basic information about the Immigration & Naturalization Service. We are talking about an agency that consists of 18,000 employees, a FY 1993 budget of approximately \$1,042,000,000 in appropriated funds and another \$586 million, approximately, that is generated by user fees. The agency is spread among some 36 districts, 20 Border Patrol Sectors, and 14 foreign cities.

The history of INS illuminates some of the problems facing this organization. The agency seems to have been passed around a bit, which undercut the organization's chance to settle on a clear identity or firm vision of what it is about. Consider:

- In 1891, it was created as the Bureau of Immigration in the Treasury Department.
- In 1903, it was shifted to the Department of Commerce and Labor.
- In 1913, it was moved to the Department of Labor.
- In 1940, it was transferred to the Department of Justice.
- Immigration was its original function. Naturalization was added in 1906, taken away in 1913, and returned in 1933.
- And somewhere in the midst of all this, in 1924, the Border Patrol was added to the agency, but structured by sectors that had no geographic or organizational relationship to the rest of the agency.

These are the obvious changes. There were even more difficult currents and tides for INS to navigate: the major statutory revisions and policy swings that seem to be a

constant feature of our immigration system. This tangled matrix does engender some sympathy for the agency.

That sympathy was evidently short-lived. For the fact is that INS has a record of virtually continuous studies, audits, and blue ribbon commissions in recent years. Some of these studies have been brutally negative:

- "Perhaps the most ailing agency in the government," according to a 1984 Heritage Foundation report. "Study after study shows that INS continues to wallow in its backwater of antiquated managerial practices and hopelessly outdated data storage and retrieval equipment." Quoted in letter from Congressman Bruce A. Morrison, Chairman, Subcommittee on Immigration, Refugees, and International Law, House Committee on the Judiciary, to Honorable Richard Thornburgh, Attorney General, dated October 19, 1989.
- INS has "degenerated into a group of segmented autonomous programs," with "weak management systems and inconsistent leadership" and a "chaotic budget development process." GAO Report, "Immigration Management—Strong Leadership and Management Reforms Needed to Address Serious Problems," (GAO GGD-91-28 Jan. 1991).

In a more neutral and studied way, the Department of Justice's annual report under the Federal Managers' Financial Integrity Act (FMFIA) is particularly illuminating. In its report dated December 31, 1992, the Department listed seventeen material weaknesses, almost half of which involved INS.¹⁷ As you consider the significant problems in INS, you can safely start with this list. For the record then, here are the material weaknesses listed by the Department regarding INS:

1. Automated Accounting and ADP Planning

¹⁷ 1992 Report by the Attorney General on Management Controls.

2. Financial Management Training
3. Automated Information Systems Planning
4. Immigration Inspector Training
5. Ineffective Security Program
6. Delivery Bonds
7. Overtime Management - Use of 1931 Act Overtime
8. Procurement Improvements in INS

The first four of the above items are consolidated as a single High Risk Area, which the Department lists as its top priority. In addition, listed as a High Risk Area/Material Nonconformance are three additional items, two of which relate to INS:

- Supervision of Fee Accounts
- Financial Management System

These last two items, the supervision of fee accounts and the financial management system, are particularly troubling because they reflect on INS' ability to manage properly the almost half billion dollars it receives in fee revenues and the one billion dollars it gets from Congress as annual appropriations.

I wanted to spend a moment going over the High Risk Areas and Material Weaknesses because they reflect the results of a structured analysis and evaluative process devised by Congress to test the integrity and reliability of various agency programs. I would not recommend total reliance on that picture, however, and so I have tried to also

respond to your request for an identification of the most significant problems in INS using some of the audits and inspections that my office has conducted.

SIGNIFICANT PROBLEMS IN INS

In organizing my discussion, I have combined issues into five topics: (1) INS as a Second Class Citizen; (2) INS Management of its Employees; (3) INS Management of its Resources; (4) INS Management of its Laws and Policy; and finally, (5) a brief commentary on the reorganization proposals that have haunted INS for three decades or more.

I. INS as a Second Class Citizen:

One of the ways my office prepared for this hearing was to gather about 15 of our senior auditors, investigators, and inspectors, all of whom had worked in INS or on INS projects. When we polled the group, we got a unanimous opinion that INS has an "institutional inferiority complex" and an employee morale problem. Several examples of INS employees' perceptions of their plight were given: that INS' vehicle fleet consists of battered clunkers while "everyone" else has new ones; that INS is "low graded," i.e., that an INS investigator can only aspire to a journeyman grade of GS-12, when most investigators in the Department can achieve promotions to GS-13; and that the Department has for years underfunded INS.

I think the morale problem is real. I trust the validity of a consensus coming from this group—they know INS. You can certainly find indications of it in the GAO report (B-239260), and in the following commentary by a former employee:

INS is ridden with "incompetency at all levels of command," has "no national uniformity in the enforcement of law or . . . policy," a "chain of command [that] is illusory," a "total failure to properly employ and supervise staffs," a "major failure to perform INS' basic function of deporting illegal aliens," and "viable budget control [is] an impossibility." Memorandum from Raymond M. Momboisse [former General Counsel at INS] to Mike Lempres, Special Assistant to the Attorney General, dated July 26, 1989.

Nonetheless, I did want to see if there was any truth to the perception that the Department gives INS less than its fair share. I did not believe I could determine whether INS' notoriously aged vehicle fleet was a result of neglect by INS or neglect by the Department of Justice. But it did seem possible to look at grade structure and compare INS' budget share to the total Departmental budget. We found that INS appears to have kept up with or outpaced the Department in its budget growth, principally because it has drawn increasingly on user fees to fund its operations. We also found that it has lower average grades than the bulk of the Department.

Appropriated Funds

INS' appropriated funding has grown steadily since FY 1981. However, when the INS budget is compared to the rest of the Department's, INS' growth has not been as great as the rest of the Department. Also, INS' growth since FY 1987 is the result of fees charged for INS services. Figure 1 shows the real growth rate of the INS budget and the rest of the Department. Until 1987, the INS' budget grew at a similar rate as the rest of the Department. When INS fee accounts began in 1987, the growth rate between INS and the Department began to diverge. The INS experienced a greater growth rate

Immigration and Naturalization Service Budget Real Percent Growth From FY 1981

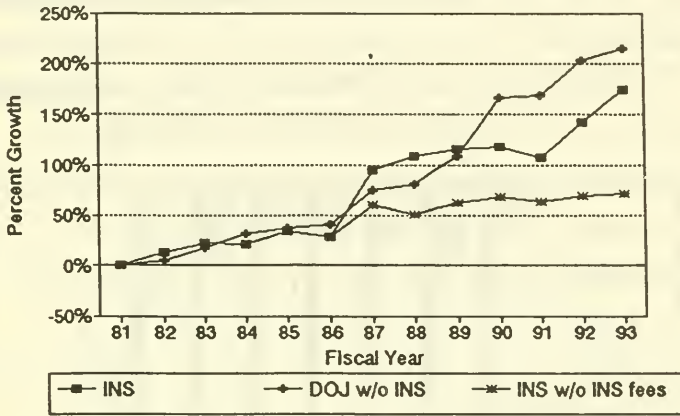


Figure 1

than the rest of the Department for the next three fiscal years. During FYs 1990 and 1991, the INS growth rate fell behind the rest of the Department; since FY 1992 it has picked up again as the difference has been reduced.

Figure 1 also demonstrates that the growth rate in the INS budget is a result of the INS fee accounts. Since FY 1987, the INS budget growth rate without its fee accounts has remained flat while the INS budget growth rate, when the fee accounts are included, has increased significantly.

INS Fee Accounts

Since FY 1987, the total INS budget has included fees for services^{2/}. In FY 1987, INS received \$157 million in fees. In FY 1993, INS projects it will receive \$586

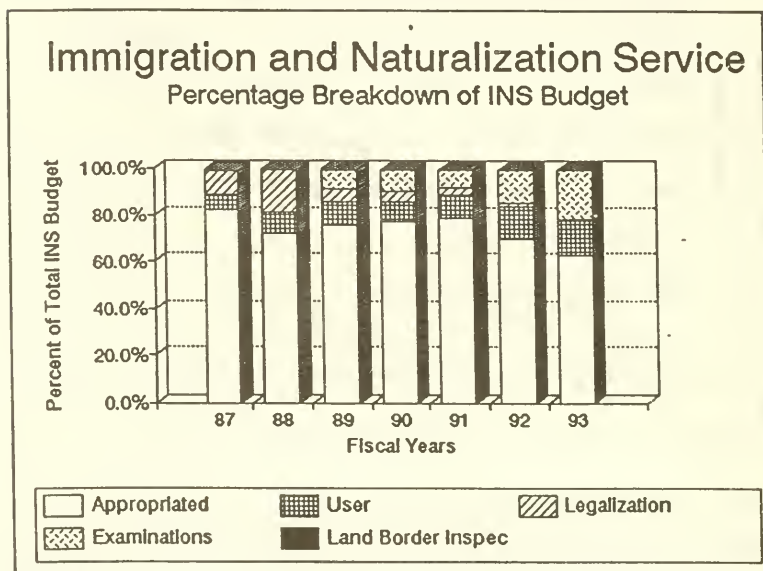


Figure 2

million in fees, a 287 percent increase in six years. Figure 2 shows the composition of the INS budget between FYs 1987 and 1993. Between FY 1988 and 1991, the INS fees were an ever-decreasing percentage of the total budget. However, in FY 1992 the INS

^{2/}The INS fee accounts are the User and Legalization fee accounts [1987], the Examinations fee account [1989], and the Land Border Inspections fee account [1991].

fees were significantly revised. Since then, the two principal fee accounts, for the User and Examinations fees, have increased dramatically as a portion of the total INS budget. (The Land Border Inspection fee account totaled only \$2 million in FY 1992, is projected to be \$4 million in FY 1993, and is not a significant portion of the total INS budget.)

INS Personnel

The number of INS personnel has increased since FY 1981. The greatest increase in INS personnel occurred with the implementation of INS fee accounts. Figure 3 shows

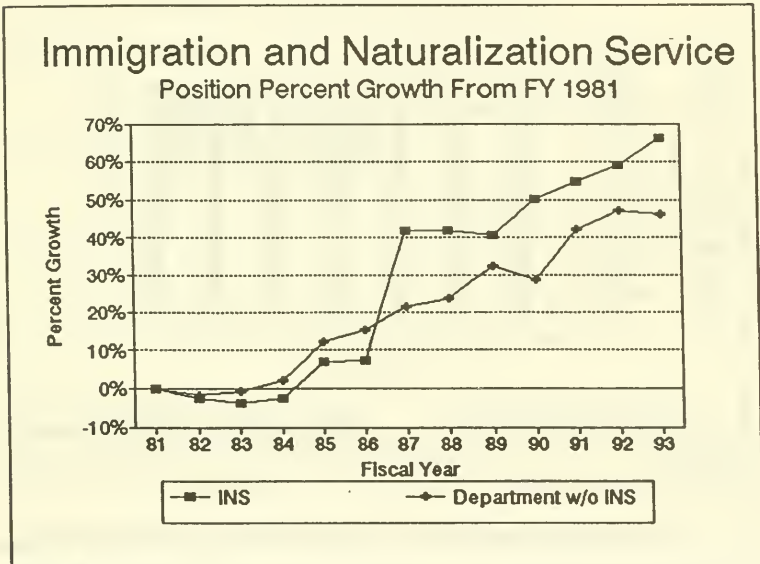


Figure 3

the growth in INS positions between FY 1981 and 1986 generally reflected the position

growth rate in the rest of the Department, but INS has consistently exceeded the Department since FY 1987.

Figure 4 shows the breakdown of positions by funding source. Since FY 1990, the increases in INS positions have occurred in the INS fee accounts. The greatest growth in positions has occurred in the Examinations fee account.

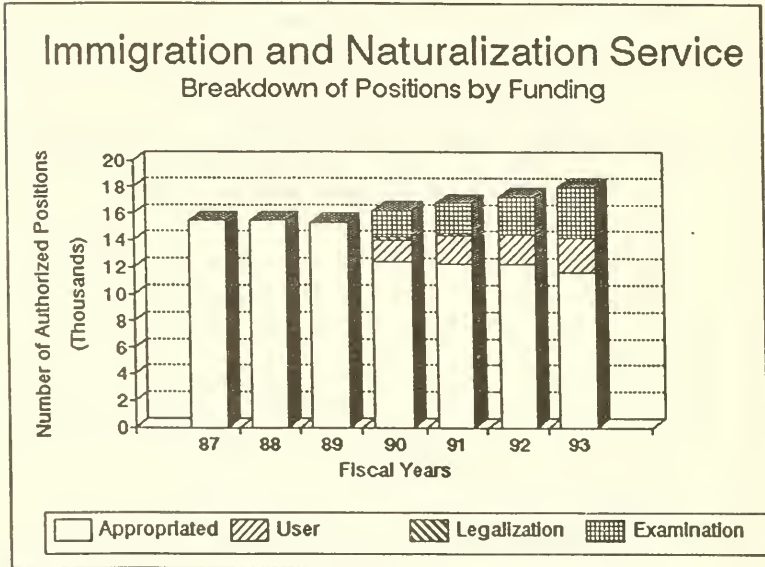


Figure 4

This comparison does not reflect whether INS' budget has kept up with increases in its duties, responsibilities, and workload. But it does show that INS has received at least its aliquot share of the Department's budget, and that it has outpaced the Department

in some instances. In sum, while I cannot determine whether INS got enough money to do its job, it does appear that it got its fair share, and was not required to suffer shortages more than the rest of the Department. That leads us then to the more interesting question of how wisely INS used such resources as it was given.

II. INS Management of its Employees

Of its total budget, INS spends two-thirds of its appropriated funds for employee salary and benefits.^{2/} Its personnel are INS' most important resource. How well it manages them is critical to the smooth operation of the agency.

INS Personnel Profile

We looked at INS personnel two ways: years of Federal service and grade levels.

Years of Service

Figure 5 demonstrates that INS personnel distribution by years of Federal service generally mirrors that of the rest of the Department. INS has a slightly more experienced population than the Department, particularly employees in the 6-25 years experience categories.

Grade of Employees

Figure 6 reflects the grade distribution by percentages of the total INS workforce and the rest of the Department. The figure indicates that the INS has roughly a bell-shaped distribution of grades, with the highest percentage at GS-9. INS has

^{2/} Untitled JMD document summarizing current services baseline numbers, using FY 92 actuals.

Immigration and Naturalization Service Years of Federal Service

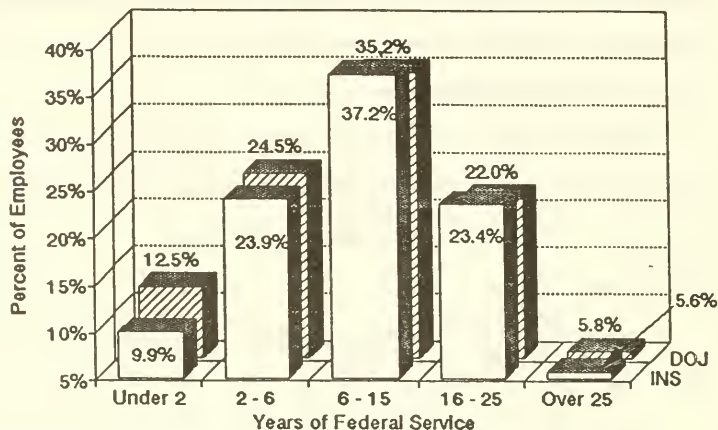


Figure 5

comparatively fewer employees at what seems to be the standard journeyman level for the rest of the Department, GS-13. INS has a greater percentage at the GS-11 and GS-12 levels. Hence, although INS has a more experienced workforce, it is also lower paid than the rest of the Department.^{4/}

INS Employee Corruption

^{4/} INS and BOP are tied for the lowest average grade level in the Department, with an 8.8 average grade. But BOP has an average years of service of 8.3 years, while INS' average is 11 years. DOJ Employment Fact Book Fiscal Year 1992, pp. 4, 7.

Immigration and Naturalization Service Grade of Employees (FY 1992)

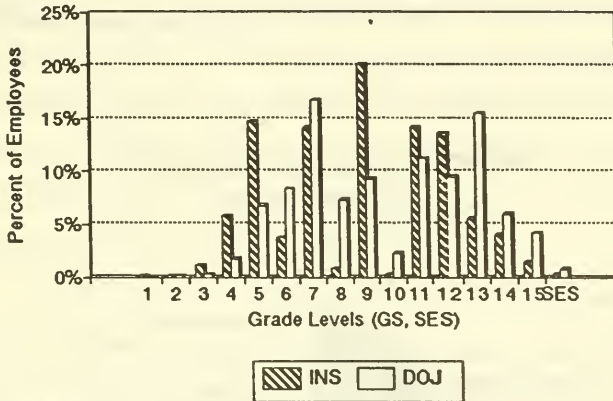


Figure 6

At the outset, I want to emphasize that only a tiny fraction of INS employees are corrupt. But the opportunities for corruption are tremendous. INS employees guard access to the United States—the entry of drugs and aliens across our borders and into the United States. INS employees also have the ability to get and sell another precious commodity: the documentation that will allow an alien to stay in the United States and to get work. The corruption threat to the Department cannot be overemphasized. A border crossing card "sells" for \$325 on the average; a temporary resident permit sells for about \$2,300; and a Green Card sells for an average of \$5,600. Last year, we

successfully concluded cases in which almost \$1 million was paid in an effort to corrupt INS employees. Think about that: \$1 million in bribes, and that is only what we know about and could prove in a court of law. When you have a mix that includes low paid employees, easy money in big sums, and low risks, you have an extraordinarily volatile and risky situation.

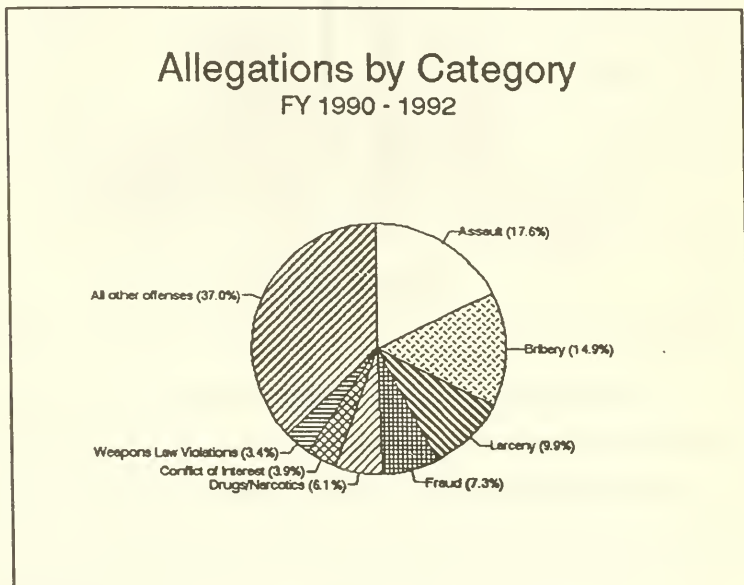


Figure 7

Consequently, it should not come as a surprise that bribery is one of the two most frequent allegations brought against INS (the other being assault). See Figure 7 above.

A year or so ago, my office undertook a study of INS corruption. Our approach was a little different. We gathered up what we knew about corruption in INS from our investigations and audit or inspection reports. That did not help very much. So then we identified former INS employees who had been convicted of taking bribes, and one immigration intermediary who had been convicted of paying bribes, and we went out to interview them. Then we set out to collect as much scientific research and behavioral studies as we could find on the subject of corruption and an individual's decision to become dishonest. In this regard, by the way, we found that not very much had been written on the subject and even less of it was very useful.

One of the more practical writings, however, that summarized the problem and had concrete suggestions on how to deal with it was a study done by the International Association of Chiefs of Police (IACP). It was an especially pleasant surprise to discover further that this useful work had been funded by the Department's own Office of Justice Programs. It is entitled, "Building Integrity and Reducing Drug Corruption in Police Departments" (September 1989), and I recommend it highly.

Distilled to essentials, the IACP study recommended the following:

- Select new hires carefully. Screen them, conduct background checks, use drug tests, psychological testing, even lie detectors to help weed out bad candidates.
- Train them.
- Supervise them.
- Require accountability; discipline for misconduct.

The answers the IACP study provided may appear to be disappointingly simple and obvious. Yet, these answers fit fairly well with what we learned from our interviews and what we knew from our studies of INS: it is often indifferent when it comes to screening its employees and training them, much of their work is unsupervised, and administrative discipline is sometimes haphazard. Fundamentally, what the IACP study seemed to be saying was that sound management techniques with respect to one's employees are also the best anti-corruption measures. Unfortunately, this conclusion compounds INS' problem: not only is it not managing its employees well, but it also, by this neglect, is fostering a climate in which corruption can occur.

Employee Screening

Although not alone in the Department of Justice, INS has suffered serious problems with employee background investigations. The problem was first reported as a material weakness in 1989 as a result of a special audit of INS. That audit showed that the INS background security program lacked adequate safeguards to ensure timely adjudications of background results, and proper handling of the clearance waiver process.

The degree and seriousness of INS failings were found during an April 1992 OIG inspection of Justice-wide background security. The figures were dramatic. Of the 5,559 INS employees possessing top secret/secret classifications, 4,205 (76%) of the employees were in violation of Department security background regulations. These regulations require employee reinvestigations at least every 5 years. Of those employees in violation,

55 percent had not been reinvestigated in over 10 years and 35 percent had not been reinvestigated in over 15 years.

Additionally, many of the background investigations which contained derogatory information were never adjudicated. In one INS region alone, over 286 employee background investigations had not been adjudicated and there was derogatory information that required some further explanation or resolution. This included employees in highly sensitive positions, for example:

- An INS law enforcement officer, who tested positive for marijuana at the time he entered on duty in 1986, had an allegation in his investigative report that he had possibly sold drugs. However, he was still employed in 1991 and had served on a drug task force.
- Another INS law enforcement officer was described in his investigative report, dated 1985, as being a "walking time bomb, a pathological liar, someone who lacked judgement and was unfit for law enforcement". He was involved in two firearm incidents before his federal employment; however, he was hired, has achieved career status, and was still employed at the time of our inspection.

Employee Training

I believe passionately in the value of training, of education. When you hire an employee but do not train him or her, you send a subliminal message that says:

- You are not worth the cost of training.
- How well you do your job is not important enough to me to bother teaching you to do it correctly and efficiently.

Moreover, training provides an opportunity for bonding with coworkers and to instill in the employee some institutional ethic, the traditions that build pride and loyalty, and the standards of conduct expected of them.

Hence, of particular importance to INS' ability to effectively perform its mission is the adequacy of training received by its employees--particularly inspectors, examiners, and enforcement personnel. Due to recent increases in illegal immigration and international terrorist threats, it is imperative that INS personnel are adequately trained to apprehend and properly process illegal entrants. But in our March 1986 audit report on Staffing and Scheduling of Immigration Inspectors at High-Risk Land Ports of Entry in the Immigration and Naturalization Service, a major concern was the use of temporary inspectors with inadequate training and inadequate supervision at high-risk land ports of entry. We observed that in the three regions using these part-time, seasonal, on-call, and intermittent inspectors, the rate of malafide apprehensions declined; in the region which did not use temporary inspectors, the rate of malafide apprehensions remained relatively constant. We recommended that, in order to ensure the effectiveness of the Inspections Program, INS establish policies and procedures regarding the training, use, and supervision of temporary inspectors.

Our February 1989 Special Audit of the Immigration and Naturalization Service found that forty-two percent of immigration inspectors performing inspection duties had not received the 14-week formal training course at Glyngo, Georgia. Some (about one third) were temporary employees who would never receive the training; others were

waiting to attend the course, but performing inspection duties in the interim. These untrained, temporary employees were performing the same duties as trained personnel. During our review, we also found inadequacies in the training of accounting personnel, procurement personnel, and security officers. Three years later, in April 1992, we unresolved the 1986 report because INS failed to complete long promised corrective action. While actions have since occurred and the report has once again been resolved, it remains open because INS still has not provided a specific time frame to complete corrective action.

Our September 1991 audit report on Immigration and Naturalization Service Firearms Policy recommended that INS establish criteria to determine when there is a need for full-time sector or district firearms instructors. In many instances the firearms instructors were overburdened by other collateral duties and, as a result, INS employees were not receiving their full firearms training.

We also reviewed all OIG inspection reports to determine where training deficiencies in INS were identified by the Inspections Division. Training deficiencies affecting performance were noted in five INS field offices. In four cases the lack of training related to field procurement activities.^{2/} In our report on INS ADJUDICATIONS PROGRAM IN THE EASTERN REGION (FEB. 1990), we found

^{2/} INS BORDER PATROL SECTOR, TUCSON, ARIZ. (MAY 1990); INS EL PASO BORDER PATROL SECTOR (SEPT. 1990); INS NEWARK DISTRICT (SEPT. 1990); INS PORTLAND, MAINE, DISTRICT (SEPT. 1990).

that INS officers performing adjudications activities applied inconsistent criteria in accepting/rejecting submitted information. This was causing unnecessary delays for many applicants undergoing the adjudication process. The report recommended that the officers be trained so as to avoid such inconsistencies.,

The Department has listed both inspector training and financial management training as high risk material weaknesses in the 1992 Report by the Attorney General on Management Controls.

Employee Supervision

INS is an agency which empowers the vast majority of its employees to make critical decisions, but devotes uncertain amounts of time to supervising their work. An inspector at a land port of entry can authorize entry of a truckload of drugs into the United States with the wave of one hand. Most actions by examiners, adjudications personnel, legalization officers, and the like are not reviewed. Decisions to deny an immigration benefit may be reviewed, but a decision to *grant* a benefit rarely is. Virtually any employee can enter INS automated data bases and make changes in its alien record systems; passwords are freely exchanged and rarely updated. Moreover, until very recently, there was virtually no way to track either who entered INS' automated data system or what they did once they got there.^{4/} The stamps, ink, and so-called controlled

^{4/} The system modifications came largely because of our prompting after we discovered a clerk who had made something on the order of 1700 unauthorized entries into the Central Index System (the principal alien data base).

certificates often are not secured and are too easily available for mischief.²⁷ In our audits, we found numerous errors in the processing and handling of documents.²⁸ A common theme was the inadequacy of independent and supervisory reviews. INS laws are complicated and constantly changing, which makes it imperative that these reviews are accomplished. Inadequate supervision, including the failure to perform independent reviews, is also a constant theme throughout the Immigration and Naturalization Service Fee Accounts Annual Financial Statement FY 1991 and Immigration and Naturalization Fee Accounts Management Letter Report FY 1991.

Earlier, I said that the easy money and low risk made corruption more likely in INS. By low risk, I meant the small likelihood of being discovered. The lack of supervision, an essential management *responsibility*, also serves to eliminate one of the traditional deterrents to crime: the fear of being caught.

Employee Discipline

We do not have very useful data at this point on how INS disciplines its employees in response to our investigations or those of others.²⁹ There is a persistent belief among

²⁷ See Special Audit of the Immigration and Naturalization Service, February 1989; Security of Controlled Documents and Stamps in the INS, July 1991.

²⁸ Controls Over Certificates of Naturalization and Citizenship in the Immigration and Naturalization Service (February 1990), Special Audit of the Immigration and Naturalization Service (February 1989), and Audit Report of I-551 Card Processing Controls of the Immigration and Naturalization Service (1988).

²⁹ We are revising our case tracking system and procedures to enhance the collection of this data, though traditionally it has been both difficult to obtain and to analyze. We also
(continued...)

those of our staff with experience in the area that INS' treatment of misconduct is spotty. Whether action is taken, and the severity of the punishment, if any, seems to be uneven and sometimes happenstance. This tentative premise can only be supported anecdotally, but the anecdotes seem to be pretty compelling. Consider:

- In 1990, the Office of the Inspector General received an allegation that an INS District Director used his influence to accelerate the granting of an INS benefit for a family member. This was reviewed by the OIG and while no criminal misconduct was established, some possible poor judgment was detected. This matter was referred to INS by the OIG. Shortly after this investigation, one of the original complainants in the investigation claimed she was physically intimidated by the District Director and a second investigation was commenced, substantiated and forwarded to INS. In February of this year, INS began to evaluate these complaints for disciplinary action.
- An allegation of misconduct against an Immigration Officer was investigated by the OIG, was substantiated and sent to INS headquarters for transmittal to the deciding official. It took nine months for the report to reach the official. In the meantime, he had promoted the individual to a higher position of trust. No action was taken against the employee.
- An INS Special Agent was discovered to be exceeding his authority by attempting to enforce local laws, including the traffic code. After an attempt to fire him, he was allowed to change jobs and become an Immigration Inspector. After being promoted to a Senior Inspector (a law enforcement position) he was again discovered making traffic stops in uniform and while armed. The OIG advised the District of the new allegation, but the agency decided to keep the employee in his position because he possessed a needed language skill.
- An INS inspector was arrested by the local police as she left a crack house and was found to be in possession of drug paraphernalia. She was

^{2/}(...continued)

have under consideration for next year's Audit/Inspection Workplan a project that would delve into disciplinary actions initiated by INS.

reassigned to the District Office while INS decided what to do with her. During this time she was assigned to the unit that approved the issuance of Green Cards, which she immediately began selling to support her drug habit and did this for over a year until the OIG arrested her.

- An INS Special agent convicted in local court for a felony (unlawful imprisonment) has been continued on the payroll for over 18 months.

Related Employee Performance

The preceding discussion really focused on INS employee corruption. It is not a great leap of logic, however, to find a comparable relevance to more fundamental performance problems, such as problems with physical abuse along the border and neglect of duties resulting in application processing backlogs of sometimes as much as a year or more.^{10/}

Prompt, certain discipline is a deterrent. Even handed discipline connotes fairness on management's part and enhances employee expectations of equitable treatment, from which is derived institutional loyalty. Another factor that we believe enhances employee's dedication to an institution is the level of confidence that employee has in the rationality of management, its purposefulness, and the care with which it protects its resources and uses them wisely, since, after all, the employee is one such resource.

III. INS Management of its Resources

^{10/} My prepared statement has not touched on the allegations of violence lodged against the Border Patrol. Although our inspection into INS Firearms Policy was specifically prompted by allegations of Border Patrol abuse, individual allegations of physical abuse are treated as civil rights cases, assigned by Department of Justice policy to the Criminal Section of the Civil Rights Division and investigated by the FBI.

This is potentially a huge topic. Essential to INS' ability to accomplish its mission is the appropriate allocation of resources between offices and functions. In our February 1989 Special Audit of the Immigration and Naturalization Service, we determined that INS was allocating investigative resources based on historical staffing patterns, not workload, resulting in poorly balanced distributions. Some geographic areas ended up with a high concentration of investigative resources while others had virtually none.

A June 1992 DOJ Management and Planning Staff study, Administrative Services in the Immigration and Naturalization Service, concluded that INS is significantly understaffed in the administrative area. This understaffing negatively impacts the performance of administrative functions necessary to support INS programs. It also adversely affects any attempts to reform administrative shortcomings in areas such as financial management and information management. In some districts, the understaffing is so critical that it has been necessary to temporarily reassign program personnel to perform these jobs. The shortage then affects program performance, increasing the backlogs of applications and data input. The report recommended a minimum of 217 new administrative positions and the use of staffing guidelines by INS.^{11/}

^{11/} During our audit of the FY 1989 Immigration and Naturalization Service Financial Closeout, we also reviewed the allocation of resources to accounting offices. We found that there had been no reallocation of resources as workloads changed. Workloads at some offices had increased tremendously without a corresponding increase in staff to handle the workload; these offices were unable to handle current workloads. Offices with static workloads had maintained staffing levels and were able to handle current workloads. We recommended that INS review its financial and accounting staffing levels
(continued...)

A major cause of this problem is the lack of reliable workload or performance data that can be used to accurately allocate resources at INS. The Management and Planning Study noted that "the data generated by the INS principal statistical reporting system are widely recognized to be flawed."

Another related problem is INS' management of overtime in the Inspections Program. While INS has made substantial improvements in this area, our audit report issued in January 1992, Overtime in the Immigration and Naturalization Service Inspections Program, advised that further savings could be realized if INS would request repeal of the 1931 Act overtime law, as we recommended. While INS was unsuccessful in a 1992 attempt to prohibit the payment of 1931 Act overtime, the Conference Report for the Department's FY 93 Appropriation encouraged the Department to propose comprehensive legislation to correct any pay disparities involving INS inspectors. This area has an inherently high potential for abuse—which we documented in audit

11/ (...continued)

to determine the appropriate allocation of resources. However, subsequent audits have revealed that many of the problems attributable to inadequate staff—including backlogs in imputing data and performing reconciliations and inadequate reviews and supervision—still occur. (CFO audit, Pages 30-36).

reports.^{12/} These abuses have also been noted in various Inspections Division reviews of district offices and General Accounting Office audit reports.

Financial Management

Longstanding problems with its outmoded and inefficient financial management system deny INS management the use of current and accurate information. The result contributes to ineffective management of the agency. Without accurate information, INS is unable to maximize the use of funds available. In past years, INS has been forced to cancel contracts and procurement actions, often severely impacting program performance.

In our February 1989 Special Audit of the Immigration and Naturalization Service, we first performed a review of INS' overall financial management. Our review determined that INS had lost such control of its FY 1988 status that we could not determine, over four months after the fiscal year had ended, if the agency was in violation of the Anti-Deficiency Act. Numerous problems were cited, including an inadequate and outmoded accounting system, ineffective fund control, inaccurate reports used by managers, backlogs, and staffing and training problems with accounting personnel.

^{12/} Staffing and Scheduling of Immigration Inspectors at High-Risk Land Ports of Entry in the Immigration and Naturalization Service (March 1986); Reimbursable Overtime Billing System in the Western Region of the Immigration and Naturalization Service (November 1986); Audit Report on the Immigration and Naturalization Service's Inspections Program at Seaports of Entry (September 1988); Special Audit of the Immigration and Naturalization Service (March 1989); Overtime in the Immigration and Naturalization Service Inspections Program (January 1992).

Because of the concerns described above, we returned to INS to do a more focused audit, entitled FY 1989 Immigration and Naturalization Service Financial Closeout (February 1991). As a result of that work, we must reemphasize that INS management has neither complete nor current and accurate data with which to manage the agency and report its year-end results. Information reported to Treasury and Office of Management and Budget on year-end reports was inaccurate and not fully supported by available accounting data. Thus, the information used by management in its decision making, including spending on procurements, training, hiring, travel, and overtime was also flawed. In the report, problems were cited with backlogs, reconciliations, and errors in the financial records.

A GAO report (AFMD-91-20), issued in January 1991, also concluded that "INS does not have fiscal accountability over its resources." GAO cited INS' outmoded accounting system, weak internal controls, and lack of management emphasis on financial management as the greatest contributing factors to the problem.

The FY 1991 financial statements of the INS Fee Accounts were first audited under the requirements of the Chief Financial Officers Act of 1990 in FY 1992. Due to the status of INS' accounting records (Immigration and Naturalization Service Fee Accounts Annual Financial Statement FY 1991), the independent public accountants were forced to disclaim an opinion on the principal financial statements. Once again, the most prevalent problems encountered by the auditors were backlogs, reconciliations, and material internal control weaknesses. The auditors also reported that the Fee Accounts

were not in compliance with either the Budget and Accounting Procedures Act of 1950 or Title 2 of the General Accounting Office's Policy and Procedure Manual for Guidance of Federal Agencies; they could not determine if INS was in compliance with the Anti-Deficiency Act. The financial management system, automated accounting and automated data processing planning, and financial management training were all listed as material issues under High Risk Area 1 of the Department's 1992 Report by the Attorney General on Management Controls.

INS User Fees

Over the years, INS has failed to collect millions of dollars in fees that should have been collected. We recently issued a draft audit report, entitled Immigration Services and Special Benefits for Which Fees Have Not Been Established, in which we estimate at least \$170 million in additional fees are not collected annually because INS does not fully exercise its authority for establishing fees. INS still provides some services free of charge; in other instances individuals are exempted from existing fees.

In December 1987, we issued an Audit Report on Adjudication and Naturalization Fees in which we also concluded that INS could increase its collections by performing annual cost reviews of fees charged, using current and complete cost data, and charging for all possible services. A December 1988 Audit Report on Immigration and Naturalization Service Collection of Fees identified internal control weaknesses in the collection of fees; these weaknesses could result in INS not collecting all the amounts due. Our December 1992 audit report on Controls Over Established User Fee Accounts in the Immigration and Naturalization Service determined that only valid program costs

were charged to the fee accounts. However, we also found that programs were not being reimbursed from the fee accounts for the full amount of direct and indirect costs incurred; instead, appropriated funds are being used to subsidize fee related programs. Since an adequate cost accounting system does not exist at INS to properly accumulate costs, INS is unable to accurately establish fees. We estimate that INS should collect at least an additional \$114.8 million in fees annually to cover its program costs.

The independent public accountants contracted to perform the financial statement audit of the INS Fee Accounts, as required by the Chief Financial Officers Act of 1990, disclaimed an opinion on the principal statements due to the status of the accounting records. The auditors also observed that there is no system in place to verify that users actually pay for services provided. Additionally, controls to ensure that all collections are actually deposited to the fee accounts are lacking. In a related assessment, the Department's 1992 Report by the Attorney General on Management Controls included the supervision of fee accounts as a material issue in High Risk Area 1.

Information Management

INS' obligations for information resources totalled over \$300 million for FYs 1989 through 1991, with an additional \$128 million planned for FY 1993. How information resources—hardware, software, data, and people—are acquired and managed is critical to INS' mission.

The Immigration and Naturalization Service has over 100 unique automated systems supporting every aspect of INS' mission. These systems support administration, financial, enforcement, records management, examinations and the inspections functions.

Many of the existing and the new systems being considered could be duplicative. For example, the Alien File Accountability and Control System (AFACS), the Regional Alien File Accountability and Control System (RAFACS), and the Central Index System (CIS) are all indexes providing the physical location of an alien physical file folder.

ADP Planning

A DOJ Special Audit of the Immigration and Naturalization Service (February 1989) stated that INS had not adequately defined its automated information systems needs even though it had been working since 1977 to automate its mission and administrative systems.

A GAO report (IMTEC-90-75) issued in September 1990 stated that, because of the lack of resources and planning for information systems, INS' managers and field officials did not have information which was adequate, reliable, and timely enough to effectively carry out the Service's mission.

A report by the Surveys and Investigations Staff to the Committee on Appropriations, U.S. House of Representatives, "Organization, Management, and Operation of the Immigration and Naturalization Service of the Department of Justice," dated April 1991, stated that: in the late 1970s, INS was still using manual information systems; in the 1980s, although INS determined its information needs and set forth a long-range implementation plan, new management disregarded the plan; in 1986, procurement irregularities were uncovered and INS was highly criticized for its lack of planning; and in 1991, INS did not have the information needed to properly manage the Service because clear missions and priorities had still not been determined.

The Department's 1992 Report by the Attorney General on Management Controls, issued to the President, reported INS' ADP Planning as a High Risk Area/Material Weakness.

ADP Security

A DOJ audit report on The Operational Activities Special Information System - OASIS (December 1987) stated that there was an absence of centralized administrative control exercised over the assignment and use of user identifications and passwords within INS. These deficiencies made it difficult for INS to establish individual accountability for unauthorized access to INS' systems. In addition, the report stated that there was no assurance that INS' ADP activities were being performed and operated in a secure environment and that sensitive applications were adequately safeguarded (summarized in Special Audit Report at page 16).

A DOJ Special Audit of the Immigration and Naturalization Service (February 1989) stated that automated information system security had significant weaknesses: computer terminals were located in open areas with easy access by unauthorized individuals; password integrity had been compromised because passwords were openly shared among employees; and no risk analysis or contingency plans had been developed for the Washington, D.C. or San Diego data centers.

An OIG draft audit report, Data Base Access Controls at the INS (February 1993), disclosed vulnerabilities in certain computer security control areas. The audit noted that INS' data are vulnerable to either accidental or intentional destruction, alteration,

disclosure, or unauthorized use. During the course of the audit, INS started some security measures that should provide greater control over vulnerable areas.

The Department's 1992 Report by the Attorney General on Management Controls, issued to the President, stated that INS' sensitive information was at undue risk because of INS' weakened security posture.

Detention Facilities

We have found a number of factors contribute to a recurring condition: the under-utilization of available bed space. These include, local district policies and practices, costs associated with transferring aliens between detention facilities, lack of transportation resources, problems in legal jurisdiction and legal services, limited staffing of Detention & Deportation rosters, and inadequate information about available space.

While certain factors mitigate INS responsibility, other factors underscore the lack of proper INS management. The following inspection reports provide some examples which illustrate this problem:

- INS MIAMI DISTRICT OFFICE (MANAGEMENT ASSISTANCE REVIEW, FEB. 1990) - This inspection revealed that the INS Detention facility at Miami (Krome, Fla.) had a capacity for 1,000 detainees but was operating at less than 55% of bed capacity due, in major part, to INS staff shortages. At that time, INS HQ Detention and Deportation officials were proposing acquisition (without competing bids) of a 300-400 bed contract facility at a cost of \$10,000,000. They were proposing this action because of their assessment of "the immediate need of detention space in the Miami, Fla. area." The inspection review pointed out that full utilization of the Krome facility, including cost for additional staffing, would be \$3.3 million cheaper in annual operating costs than the proposed contract facility.
- INS PHOENIX DISTRICT (FEB. 1991) - The inspection disclosed that a \$2.5 million dormitory complex used to house aliens at the Service Processing Center (SPC) in Florence, Ariz. remained unoccupied long after

its completion due to INS staffing shortages. As a result, INS District officials housed aliens in non-INS facilities at a cost estimated, at that time, to be in excess of \$350,000. Additionally, INS was contemplating further expansion of this SPC without assurance that staff would be available for operation when the facility was completed.

- INSPECTION OF DETENTION FACILITIES IN THE INS (JAN. 1993)
This report disclosed that INS paid \$28 million in 1991 for non-INS detention facilities even though considerable bed space was available at some SPCs. INS management inefficiency appeared to be contributing to the SPC under-utilization. Additionally, INS officials were planning to expand non-INS facilities and also expand SPCs including the one in EL Paso, Texas, even though it is currently operating below capacity.

In sum, the evidence over the past three years of audit reports from my office, corroborated by near-identical conclusions in GAO reports, and supported by other commentaries on INS, such as the Surveys and Investigations Staff of the House Appropriations Committee, leads to the conclusion that INS does not have the wherewithal to manage itself wisely. It lacks methods to collect information, to sort it, to analyze it, to verify it, and it lacks the coordinative and planning capabilities to use the information, even if available. It lacks the infrastructure necessary to support sound administration, budget planning and execution, information management, detention space forecasting, and the like. I think the single most important piece of advice that anyone could give to Congress, to the new Attorney General, or to the next Commissioner of INS would be that, whatever the temptations, the shortfalls elsewhere, the pressures of the moment—do not neglect funding and nurturing of the support infrastructure. We must invest for the future; we must invest if INS is to be rejuvenated.

IV. INS Management of its Laws and Policy

In its Immigration Management audit report, GAO was particularly critical of the lack of clear policy direction from INS headquarters. I also recall reading about a study by the Rand Corporation, in which it was disclosed that the average amount for an employer sanction differed widely depending on which INS region enforced the violation. Finally, the recent news reports describing how any alien claiming asylum can obtain entry into the United States *and* a work permit, regardless of how patently transparent the claim, suggests that our Nation's immigration law and policy could use some Spring cleaning.

I will be brief in discussing this proposal. I know it sounds like a very trite panacea; I do not intend it so. My thought is this. Our immigration laws and policies have become as complicated as our tax code. Such complexities work an injustice to aliens, to whom English is not a native tongue, for how can they know that they have secured the rights for which they may be eligible. It puts a heavy strain on INS employees as well, for it must be very difficult for these low-graded employees to keep up with the changing vagaries of the laws.

Therefore, I urge consideration of an effort to reform and simplify our immigration law in order to achieve three purposes: First, so aliens will have a better chance of securing what rights or entitlements as they may be eligible for; and, second, to give INS employees a simpler matrix of rules because doing so will enable them to process benefit applications in less time and will increase the likelihood that the processing will be performed with uniformity and fairness. And third, to come up with firmer ways of

dealing with illegal entrants that will preclude them from remaining in the United States simply by default.

V. INS Reorganization Proposals

Much has been written about the so-called schizophrenic persona of INS—that it suffers from some dysfunctional marriage of two incompatible responsibilities: to keep some aliens out of the country (the "enforcement" role), but to serve and assist other aliens to enter and to obtain residency and citizenship (the "service" role). The correspondent role that the United States Customs Service fills has also been noted.

Consequently, it seems that there always has been in circulation one or another proposal to reorganize or restructure both the agencies and their responsibilities. The most recent study, a draft report from the General Accounting Office, was performed at the request of former Senator Bentsen last year. It was entitled, "Customs Service and INS - Dual Management Structure for Border Inspections Should Be Ended," (B-251101).

In it GAO reported:

- "Coordination problems at the land border crossings will not be resolved until the current dual management structure is ended."
- A panel of distinguished public officials "reached consensus" that consolidation "represented the most viable option."
- Research showed "no broad scale reorganization has ever been approved by Congress because of opposition from agencies and departments that stand to lose jurisdiction, from congressional committees that would be similarly affected, and from agency personnel and private sector organizations that see their interests adversely affected."
- GAO did *not* recommend moving Border Patrol and the INS inspection function to Customs. Instead, it suggested separating INS from DOJ and

Customs from Treasury, and joining the two as a separate, independent "Border Management Agency."

I do not think I should comment on this proposal specifically. I have not studied it, and the Department deserves a chance to address it without having to deal with some premature opinion from me. I would suggest that we be wary about such proposals on a more general level, however, for a couple of reasons.

First, many organizations appear to have multiple and even contradictory duties. IRS must aid and advise the taxpayer, while hunting out and prosecuting the tax cheat. The Food & Drug Administration must regulate the industry, encourage new developments, and yet guard against unsafe, inadequately tested medicines. Throughout the Government you will find agencies that must simultaneously be both cheerleader and policeman for some industry or constituency. Sound management practices and structures should support one goal, or another, or both. If I have a solid payroll system, it shouldn't matter whether I use it to pay a border patrol agent or an immigration examiner. If I have a "deplorable"^{12/} payroll system, it is not going to get better by separating the two employees into different organizations. Hence, I think it important to stay focused on what might be accomplished and what might not change at all before beginning a reorganization.

My second observation about a realignment of INS functions is that we could learn something from history. None of these proposals has been adopted thus far. Something keeps getting in the way. We can waste an awful lot of energy trying to implement a

^{12/} GAO's word, see "Immigration Management" B-239260, chapter 5.

reorganization that should be spent on more basic improvements. These proposals are expensive, they distract employees from virtually any other work, and the marriage of new structures, jobs, personnel, equipment, and the like, requires that the underlying responsibilities, duties, and functions be deferred. Prudence would suggest that one question whether INS can afford this plan right now.

CONCLUSION

That concludes my report and prepared remarks Mr. Chairman. I have discussed a number of studies that have been critical of INS. I think we ought to remember that there are legions of employees out there who are fighting to stem an enormously strong tide of humanity that desperately wants to reach our Nation's shores, and that these INS employees are working bravely and in difficult conditions. They deserve our support; we must give them the tools with which to do their jobs, and we must give them the attention that this difficult task requires. I thank you for this Subcommittee's interest in that challenge, and would be pleased to attempt to answer any questions you might have.

Mr. CONDIT. Thank you, and we appreciate you being here this morning. We will have some questions a little bit later.

Mr. Wortman, a distinguished public administrator and currently a fellow at the National Academy of Public Administration. Thank you, sir.

STATEMENT OF DON I. WORTMAN, FELLOW, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. WORTMAN. Mr. Chairman and members, on two occasions I have reviewed mission and management issues at the Immigration and Naturalization Service. From November 1990 through February 1991, I was a member of a National Academy of Public Administration review team that provided advice to the Department of Justice on a management improvement strategy for INS.

The Attorney General at that time requested this assistance because he was faced with a number of internal and external reports critical of INS's management and management systems. This review team was led by Norman Carlson, former Director of the Bureau of Prisons for 17 years. The other member was William Van Stavoren, former Deputy Assistant Attorney General for Administration. Attachment A to my statement lists the 15 recommendations contained in our February 1991 report.

Other witnesses, as has Mr. Thomas, have already talked about the contrasting roles of Enforcement and Service, and I will not go into that in terms of building an effective organization. But as members of this committee recognize, a well-designed organizational structure, by itself, does not ensure effective performance. There must be leaders with courage and vision, a set of core values shared throughout the organization, and a highly motivated work force.

The 1991 report did address some important organizational issues, such as the infrastructure problem that the inspector general just talked about. We talked about the role of regional offices. We talked about the management system problems in human resources, in financial management, and in management information systems.

However, the major focus of our report was building a cadre of competent executives at INS with a servicewide view of that organization, a demonstrated record in public management, and a long-term commitment to the agency. The problems in that agency will not be solved by leaders with a 2 to 4 year timeline, let me assure you. The contrast between this agency and another bureau in the Department of Justice—the Bureau of Prisons—are night and day in terms of executive leadership, stability, professionalism.

Repeatedly in our study we came to the conclusion that INS, especially given the complexity of its mission, needed a much stronger executive team. Unfortunately, we also found the agency deficient in its executive development programs, and we made a number of recommendations about that.

From my continuing contacts with the Department and INS, I believe they took our recommendations seriously. They have added a number of highly skilled executives from other agencies of the government, some of whom I have personal knowledge of their capabilities.

They did create an executive associate commissioner for management and an executive associate commissioner for operations, which was consistent with one of our recommendations—although we called them deputy commissioners. Unfortunately, with the change of administrations, and by not making the job a career position, INS just lost a very able executive associate commissioner for operations which, once again, causes instability in the key operating component of that agency.

My second look at INS occurred in December 1992, when I chaired a panel discussion at the academy on an old issue: How to improve management of border inspections. This was done at the request of the General Accounting Office. A list of the panelists is included as attachment B to my statement.

Over the past 20 years, numerous study groups have recommended actions to correct fragmented border control programs as well as interagency rivalries, conflicts, and jurisdictional disputes between INS and the U.S. Customs Service. These operational problems are severe, they have persisted for a long time, and are deeply rooted in the culture of the two agencies.

The panel members did not believe the current dual management structure between INS and Customs was adequate to handle the customs and immigrations service demands that confront the government now and that will increase in the future. Their view of the modern world was one of increasing international trade and business competition in which the movement of goods, services, and people would be inextricably linked.

The panel viewed the North American Free Trade Agreement as presenting an opportunity to think about the future and how well prepared this government is to deal with the issues surrounding the movement of people and goods within an expanding trading block. They saw management benefits to be gained by vesting responsibility with one agency.

These benefits would include an improved capability to think strategically about related immigration and customs issues and clearer accountability for border operations by having a single entity representing the U.S. Government on issues surrounding the movement of people, goods, and services into the United States.

This panel of current and former officials experienced with customs and immigration issues reached consensus that consolidating Customs and INS into a single independent agency represented the most viable option for preparing our government to meet the challenges posed by changing international business competition and increasing international migration flows.

That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Wortman follows:]



National Academy of Public Administration

Chartered by Congress

STATEMENT OF DON WORTMAN
FELLOW OF THE
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
BEFORE THE
HOUSE GOVERNMENT OPERATIONS SUBCOMMITTEE
ON INFORMATION, JUSTICE, TRANSPORTATION,
AND AGRICULTURE
MARCH 29, 1993

Mr. Chairman, on two occasions I have reviewed mission and management issues at the Immigration and Naturalization Service.

From November 1990 through February 1991, I was a member of a National Academy of Public Administration review team that provided advice to the Department of Justice on a management improvement strategy for INS. The attorney general requested this assistance because he faced a number of internal and external reports critical of INS's management and management systems. This review team was led by Norman Carlson, former director of the Bureau of Prisons; the other member was William Van Stavoren, former deputy assistant attorney general for administration. Attachment A to my statement lists the 15 recommendations contained in our February 1991 report.

I am respectful of the challenges INS leadership faces. They must balance within their organization two contrasting roles -- enforcement and service. In enforcement, typified by the U.S. Border Patrol, you need a disciplined workforce prepared to say, "I'm taking you into custody." In the service role, you need a well-trained workforce prepared to say, "How can I help you?" Any leader would be challenged in creating a unified organizational culture for this dual-purpose entity with its 15,000 employees in more than 50 District, Border Patrol and international offices.

As members of this committee recognize, a well designed organizational structure does not ensure effective performance. There must be leaders with courage and vision, a set of core values, and a highly motivated workforce.

The 1991 report did address some important organizational issues such as the role of the regional offices and some equally important management system problems in human resources management, financial management and management information systems. However, the major focus was building a cadre of competent executives with:

- a) a service wide view of the organization,
- b) a demonstrated record in public management, and
- c) a long-term commitment to the agency.

Repeatedly in our study we came to the conclusion that INS, especially given the complexity of its mission, needed a much stronger executive team. Unfortunately, we also found them sadly deficient in managerial and executive development programs and recommended a set of criteria INS should meet in designing such programs.

From my continuing contacts with the department and INS, I believe they took our recommendations seriously. They have added a number of highly skilled executives from other agencies of government. They did create an executive associate commissioner for management and an executive associate commissioner for operations, which was consistent with our recommendation (although we called them deputy commissioners). Unfortunately, with the change of administrations and by not making the job a career position, INS just lost a very able executive associate commissioner for operations which once again causes instability in the key operating component of that agency.

The only organizational recommendation that we made with which the department and INS differed was the one concerning regional officers. We believe the agency is too large and dispersed to be effectively managed from Washington. They, however, reduced the regions to administrative support arms of headquarters. We would argue for a regional management level with regional directors clearly subordinate to headquarters in terms of policy and priorities. This has not always been the case in INS.

My second look at INS occurred on December 1992, when I chaired a panel discussion at the Academy on an old issue: how to improve management of border inspections. This was done at the request of the General Accounting Office. A list of the panelists is included as Attachment B.

Over the past 20 years, numerous study groups have recommended actions to correct fragmented border control programs, as well as interagency rivalries, conflicts, and jurisdictional disputes between INS and the U.S. Customs Service. GAO summarized for us the results of past studies as well as their current field work examining relationships between Customs and INS on the southwest border. These operational problems are severe, they have persisted for a long time, and are deeply rooted in the culture of the two agencies.

The panel members did not believe the current dual management structure between INS and Customs was adequate to handle the customs and immigrations service demands that confronts the government now and that will increase in the future. Their view of the modern world was one of increasing international trade and business competition in which the movement of goods, services, and people would be inextricably linked.

The panel viewed the North American Free Trade Agreement (NAFTA) as presenting an opportunity to think about the future and how well prepared the government is to deal with the issues surrounding the movement of people and goods within an expanded trading block. And, they saw management benefits to be gained by vesting responsibility with one agency. These benefits would include: (1) an improved capability to think strategically about related immigration and customs issues; and (2) clearer accountability for border operations by having a single entity represent the U.S. government on issues surrounding the movement of people, goods, and services into the United States.

The NAPA panel of current and former officials experienced with custom and immigration issues reached consensus that consolidating Customs and INS into a single independent agency represented the most viable option for preparing our government to meet the challenges posed by changing international business competition and increasing international migration flows.

This concludes my testimony, Mr. Chairman.

ATTACHMENT A

**RECOMMENDATIONS INCLUDED IN NAPA ADVISORY TEAM REPORT:
MANAGERIAL OPTIONS FOR THE
IMMIGRATION AND NATURALIZATION SERVICE****Organizational Issues**

1. Adopt an organizational structure similar to that shown on the chart in Attachment E* which calls for the creation of Deputy Commissioner positions to provide leadership by persons who have a demonstrated record in public management and who will have a long-term commitment to the agency.
2. Maintain regional offices essentially in the existing formal structure but introduce process changes to ensure policy and management control. In order to break from recent negative experiences with Regional Commissioners and to assure that regions are not viewed as having policy formulation responsibility, the job title should be changed from Regional Commissioner to Regional Director.

Executive Leadership

3. Establish Deputy Commissioner positions and fill them with persons who have a demonstrated record in public management and who will have a long-term commitment to the agency.
4. Select regional directors based on their demonstrated competence in public management and their long-term commitment to the agency.
5. Introduce in INS the concepts of participative management and executive teamwork.

Human Resources

6. Revitalize the human resources program and institute an executive development program that will assure the Service of a cadre of cross-trained managers.

Financial Management

7. Revise the budget formulation process to provide greater involvement for operating management and to assure an adequate balance among the inter-related programs of the Service.

* Included here as part of this attachment

8. Revise the budget execution process to place legal accountability for fund management with operating officials throughout the Service. Annual operating plans should be established by the Commissioner for each component. The Comptroller's Office should be specifically tasked to conduct a thorough and ongoing review of budget execution to assure that there is compliance with plans approved by the Commissioner and that INS, as an entity, is solvent.
9. The accounting problem - both in terms of systems and operations - must be corrected. INS cannot afford to wait for the "ultimate system" to be developed since that may well require several years to accomplish and there are pressing needs now. An interim solution must be found until a more permanent solution can be developed.
10. Review the INS program budget structure to ascertain whether it currently serves the needs of the Service in executing its programs as well as justifying funds. The use of the many dedicated funds may be resulting in an imbalance in program operations.

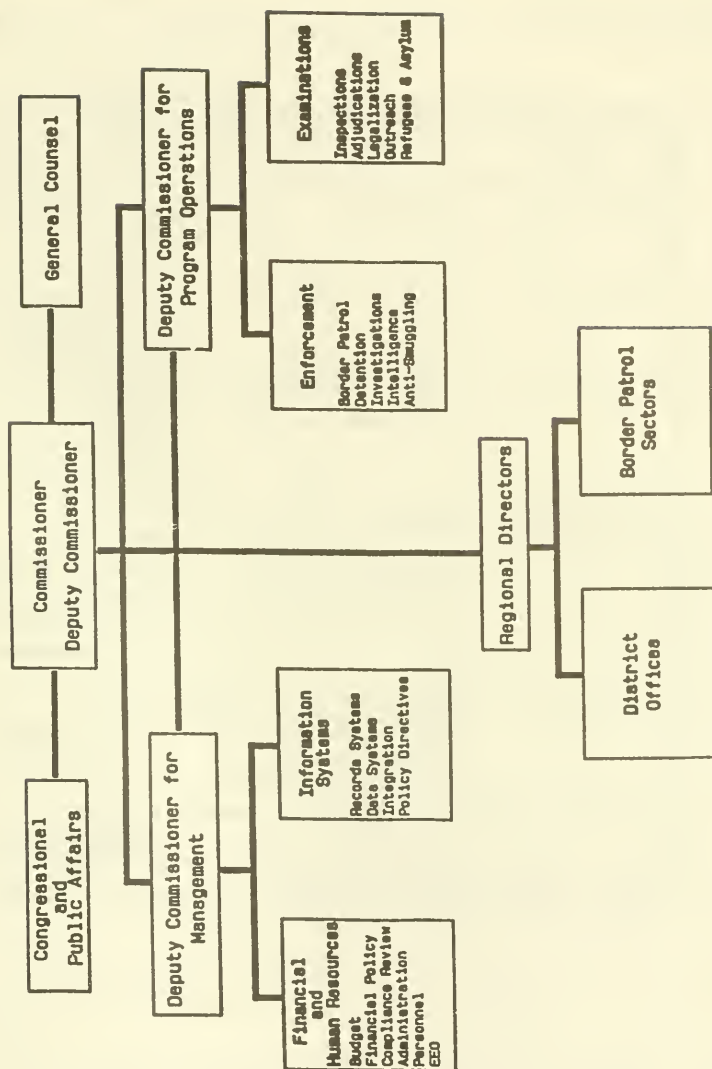
Information Technology

11. Top management needs to become heavily involved in the INS Technology Program. Resources for the program need to be allocated by the Commissioner on the basis of an integrated planning process. A system of user groups must be implemented and fostered by top management.

Other Issues

12. Create an internal field review capacity in INS to assist the Commissioner in oversight of field operations.
13. Establish an elevated and integrated security function.
14. Establish an Integrity Review Board under the umbrella of the INS executive team.
15. Focus continued attention on the agency's procurement activities to assure adequate policies and procedures are in place and that procurement actions are being taken in accordance with those policies and procedures.

Proposed Organization of the INS



Membership of Panel for Discussing Options to Improve
Management of Border Inspections (December 29, 1992)

Name	Present position	Prior position
Wortman, Don (Panel Chairman)	Consultant and NAPA Fellow	Vice President and Director of Federal Programs for the Academy
Dean, Alan	Consultant and NAPA Fellow	Assistant Secretary for Administration, U.S. Department of Transportation
Keating, Frank	General Counsel, U.S. Department of Housing and Urban Development	Assistant Secretary (Enforcement), U.S. Department of Treasury; Associate Attorney General, U.S. Department of Justice
Meissner, Doris	Senior Associate, Immigration Policy Project, Carnegie Endowment for International Peace	Acting Commissioner, and Executive Associate Commissioner, INS; Deputy Associate Attorney General, U.S. Department of Justice
Riso, Gerald	Special Advisor to the Secretary for Financial Management, U.S. Department of Housing and Urban Development	Deputy Commissioner, INS; Associate Director for Management, OMB
Schaffer, Robert	Partner, DeAngelis and Schaffer	Assistant Commissioner, U.S. Customs Service

Source: Panel membership selected by GAO and the National Academy of Public Administration.

Mr. CONDIT. Thank you very much, sir. We will open it up for questions now. I would like to go back to Ms. Yañez. You mentioned using the proposed national service corps to help facilitate some claims. Can you elaborate on that?

Ms. YAÑEZ. Yes. The recommendation would encompass training some of these persons who may be in this corps—that I know we don't have yet, but who may be in this corps—to assist in some of the affirmative benefits that persons may apply for through the Immigration and Nationality Act.

One of them would be to train persons in assisting in asylum adjudications and the other would be to assist in naturalization. We believe that there is a very positive step that the INS can take, and hasn't expended enough resources on, and that is outreach in naturalizing all of those persons who are not participating fully in the political process through naturalization outreach. This is the type of recommendation that we are thinking about in terms of using that labor pool.

Mr. CONDIT. Mr. Wortman, how does that sit with you? You just talked about professionalism, depth of understanding of jobs.

Mr. WORTMAN. I think it would require heavy investment in training. Already the inspector general talked about the complexity of the rules. This agency is not one that has historically invested in training to the extent that I think would be necessary. You're talking about a pretty rich resource in terms of bringing these people up to speed, I would think.

Mr. CONDIT. I have a series of questions that I must ask the entire panel. I know that each of you have touched on the answer to each question, but I would like to get a consensus, amongst all of you.

I'll start with Mr. Wray. What do you see as the single most important issue facing the country in terms of immigration policy, in terms of management and organization of INS?

Mr. WRAY. In terms of the management and organization of INS, we believe the highest priority is the development of an overall strategic vision by the agency that would look at its priorities, determine what the agency is trying to accomplish, what's realistic for it to accomplish, and to develop that sort of a vision in close consultation with the Congress and the groups that would be affected by it.

Obviously, in addition to the management problem that INS has to deal with, there are fundamental policy issues of immigration, on which there is no current national consensus. We believe, however, that INS, through developing this kind of a vision, could serve as a catalyst, perhaps, to try to reach some agreement on those issues or, at least, bring us closer to a resolution.

Mr. CONDIT. Ms. Yañez.

Ms. YAÑEZ. Yes. As I was thinking about this question and trying to come up with what is the most important issue, that was a very difficult thing to do, to pare it down.

Immigrants contribute to the U.S. economy—in manufacturing, sports, the armed forces, agriculture, and every other industry. Immigrants are working shoulder to shoulder with U.S. citizens to build the United States.

Sensational media reports should not distort the delicate balance between the INS providing benefits to those who deserve them, and conducting legitimate Enforcement functions. The INS, like all agencies within the Department of Justice, should ensure that the Immigration and Nationality Act laws are enforced fairly and evenhandedly. Ideology, unfortunately, has driven the INS in recent years.

Many are calling for major reforms to the asylum system. As I mentioned in my opening remarks, much of this outcry is based on highly publicized reports which are not supported by published INS statistics about asylum filings. A person fleeing from persecution has a right to seek protection. The United States has a moral and legal obligation to provide protection to those who deserve it.

The bombing at the World Trade Center was a terrible tragedy. The INS should use modern and reliable biometric identification techniques to inspect visitors and to identify individuals who have engaged in terrorist activity. To date, no one has been convicted of these heinous acts.

We should remind ourselves that a person charged with a crime is presumed to be innocent. As a result, it is premature to fault the INS for failing to identify and to deport the alleged noncitizen perpetrators of the World Trade Center bombing. The U.S. Constitution requires that fair procedures be provided to all, including those alleged to be terrorists.

It might be easier to arrest and deport someone without a hearing, but to do so would insult all of us and the Constitution. To paraphrase a late Justice of the Supreme Court, the true test of society's freedom is the way it treats its most vulnerable members.

I would make some concrete suggestions in terms of revamping the way INS serves, directly, the public, and I include this as sort of the major issue in INS—revamping the way that INS district directors provide services to the public, with the goal of providing better, more efficient service.

At each INS office, create a plan to facilitate access to information to the public. Allocate greater amounts of the INS budget for contact representative and other positions that aid the efficient provision of services. Better address the needs of its non-English-speaking clientele. Better use of telephone service as an alternative to requiring persons to come to the service office, where possible.

Improve the training and supervision of INS contact representatives. Increase access to INS application forms. I know that we're going to ask other sorts of management and organization reforms, but these, I think, are the issues as I would discern them.

Mr. CONDIT. Thank you very much. Mr. Hankinson.

Mr. HANKINSON. I think the issues are fairly simple, not as complex as one would think, although this would require maybe a longer answer than I will give.

One, I would like to see that the laws be simplified so that the INS personnel can understand them.

Two, INS lacks an administrative infrastructure. Regardless of what occurs, if this is not strengthened, they will continue to have some of the same problems we see. Their ADP systems are inadequate. Their financial management systems are out of date. How can one list priorities, place resources where they are needed, even

prepare for a budget, when they do not have the necessary information upon which to make these decisions?

Lastly, I would want to confirm what Mr. Wortman stated, that there appears to be, at the top of INS, for reasons we all know, a changeover of personnel. Thus, you have a changeover in emphasis, of priorities, and knowledge itself.

Mr. CONDIT. Mr. Wortman.

Mr. WORTMAN. Building the capacity of leadership. That means both career executives and political executives; and, with the political executives, if we continue to have 2- to 4-year turnover, these systems will be the same 4 years from now as they are right now. You can be assured of that.

Mr. CONDIT. Do those turnovers happen to coincide with national elections?

Mr. WORTMAN. Quite often they do, sir, yes.

Mr. CONDIT. It has been suggested for a number of years that the country would be better served if the function of the INS were parceled out to other existing agencies. Typically, these proposals involve the State Department or Customs Service, or creating an independent immigration agency.

Mr. Wortman, I know you mentioned this in your testimony, or it was in your written testimony. Both former Commissioners suggest versions of this. I'd like to ask everyone on the panel, what is your view on these proposals?

Mr. WRAY. I'll start with you. We'll just go right down the line again. I have to ask these questions.

Mr. WRAY. I don't think we've quite reached the point in our work where we'd have a position on whether INS should be fundamentally dismantled and its functions assigned to other agencies. I think there's a lot that can be done within the agency to try to get a hold of its priorities and to improve its own operations.

Obviously, there is a lot of duplication within INS itself. There's also duplication between INS and other agencies, the problem of Customs and INS on the border being the leading example. Certainly, its functions could be assigned to other agencies.

The FBI could take over a number of the investigative activities. The State Department could take over a number of the Service activities. I think that's clearly an option.

Our position is, at least when it comes to the border-crossing problem, that either there needs to be a new agency to take care of problems at the border or the system of dual management now has to be terminated. One agency or the other, either Customs or INS, has to be put in charge of it. It's just not working now, evidently never has and never will.

However, from an overall perspective, I think, our work so far would indicate that there's a lot that can be done within the existing system to improve INS.

Mr. CONDIT. All options are open to you?

Mr. WRAY. Yes, sir.

Mr. CONDIT. Ms. Yañez.

Ms. YAÑEZ. I think you're going to come to the same conclusion from my comments, as well. Because the INS has not functioned well and has not been managed well and has perhaps not received proper policy direction, we don't know how well it would work if

it were a well-running machine. To decide now that it may need to be parceled out in terms of its function may be actually premature.

One of the things that is of concern, though, in terms of this dual role of law enforcement and benefits is that it, in fact, does create a mentality among all of the officers that they are law enforcement officers, and may treat someone who comes in to file for a benefit in a manner that would try to determine whether or not this person should be excluded.

I also come back to the issue of asylum, because that's such an important issue that I don't believe should even be considered a law enforcement issue in any way whatsoever, when it is, in fact, a protection issue. Whether or not you should have persons who see themselves as law enforcement officers to be making those determinations, I think there's an inherent conflict.

The other issue is whether or not, if there's a decision to be made that certain functions should be parceled out, you would also have to have an analysis of the other agency and how effective that would be. I personally have not reviewed the Department of Labor or the Department of State to have an opinion on those statements.

I would like to take this opportunity to make the following statement, that I probably should have made at the beginning. For identification purposes, I did head President Clinton's immigration transition team. However, all comments that I am making today are my own and are not to be interpreted as representative of the administration.

Mr. CONDIT. Absolutely. I would like a followup question on the asylum issue. You've mentioned that several times.

I understand that it's over a 1 year period of time before people who claim political asylum come back for some sort of hearing—if that's incorrect information, you can correct me—and there is only a small percentage of the total that actually come back and show up for these hearings. Have you thought about that, and correcting that?

Ms. YAÑEZ. First of all, I don't think that's correct. Once a person presents themselves, there actually is a review process to assure that there isn't a strictly frivolous claim. Whether or not someone actually obtains work authorization is also determined on whether or not there is a credible fear.

I think people think that someone comes to the United States and says, "political asylum," and they have work authorization and they can stay in the United States for as long as they want. At least that's what "60 Minutes" would have us believe. That isn't true. There, in fact, is a review process and we have enough laws on that issue.

The problem may be with inefficiency and ineptness on the part of the Immigration Service, but there actually is a threshold determination. The persons who are in that system are persons who have met the threshold "credible fear" standard. They are not a person that has absolutely no claim whatsoever, because they could have been excluded.

Now, the other issue is detention and whether or not there is sufficient detention space. What they didn't say in the report is that if someone is determined to be a security risk or somebody is deter-

mined to be an absconson risk—and that is the job and within the jurisdiction of the person that is making that assessment—that person is supposed to be detained and, in fact, there are detention centers in other parts of the country.

Many of the Haitians who were at Krome have been transferred over to south Texas. Many persons who have been stopped in other parts of the country have been transferred to other detention facilities, and those determinations are made. So I think there's a complete misperception that somebody just comes in and says "asylum" and suddenly they're in the interior of the United States and lost forever.

Mr. CONDIT. Hopefully, this hearing will help surface some of that information. Mr. Hankinson.

Mr. HANKINSON. Mr. Chairman, I would mention that we have just started a review of the INS case hearing process, and we'll be sharing that with this subcommittee. It will probably be 4 or 5 months until it comes to conclusion.

Mr. CONDIT. We'd love to have that information.

Mr. HANKINSON. As far as the reorganization proposals, my office has not studied these proposals, and I am somewhat hesitant to comment upon them. However, let me say that I am somewhat wary.

No. 1, if you look at INS's history, they were one time part of Labor, Treasury, or Commerce. So I'm not saying we'd be reinventing the wheel, but there may be a process that affords that view.

No. 2, are we simply transferring the problems that now exist to another agency or an independent agency or whatever the case may be? I do believe that, with the proper attention, if the proper attention is given to INS and all of the factors that have been discussed today, that INS can be successful within the Department of Justice.

Mr. CONDIT. Good point. Mr. Wortman.

Mr. WORTMAN. I can report on the deliberations of the panel I chaired. I want to make it clear to the subcommittee, I do not consider myself as knowledgeable about either Customs or INS as some of the people on that panel that day. They looked at the options the GAO staff prepared, which included: One, improved coordination within the existing framework; two, establishing one agency as the lead for primary inspections, which tended to be the recommendation in many of the preceding studies over the last 20 years; and three, to create a border management agency by merging INS border patrol and inspection functions with the Customs Service.

After deliberation, they rejected all of those and came up with a recommendation that, given their view of the future plus the pressure we have in our government to be as economical as we can in the delivery of government services, that we should consolidate these two agencies to provide a framework for making progress. That leaves open a lot of questions, but that's where they came out that day.

Mr. CONDIT. Thank you, Mr. Wortman. I would ask my colleagues to bear with me. I've got two more questions I want to get through, and then we'll open it up. They have questions as well.

Mr. Wray, has the lack of coordination between the Customs Service and the Border Patrol and the INS investigations affected the war on drugs?

Mr. WRAY. We haven't specifically looked at that issue. There are certainly coordination problems there. I don't think we've looked specifically at how they've affected the war on drugs. They have certainly been severe in the other areas, and I would have no reason to think that they haven't had an adverse effect there.

Mr. CONDIT. Ms. Yañez.

Ms. YAÑEZ. I'm sorry. I didn't hear the question.

Mr. CONDIT. Has the lack of coordination between the Customs Service, the Border Patrol, and the INS investigations affected the war on drugs?

Ms. YAÑEZ. Mr. Chairman, I have not looked at that issue.

Mr. CONDIT. OK. Mr. Hankinson.

Mr. HANKINSON. We work with both entities ourselves on law enforcement problems, including the war on drugs at the border. I must say, without citing any specific study, because we have not done one, but from a practical standpoint of working with both entities on a daily basis, I do not believe that would be a fair assessment.

Mr. CONDIT. Mr. Wortman.

Mr. WORTMAN. I don't know. The one thing the GAO presented in its work to our panel that left you puzzled is that, in this cross-designation of inspectors that supposedly occurs between these two big agencies—which doesn't work well, because they don't train each other on their respective laws well—that one of the things that was interesting was the Customs Service, in its performance appraisal, does not give weight to any inspection done by a Customs inspector that would detect that a person coming into our country needed a secondary review by a more knowledgeable INS official. They do not give weight to that.

When you have these organizations, who supposedly are sharing an inspection function, who are sending different signals to their independent troops, you have a problem.

Mr. CONDIT. Sunday's Washington Post contained a story about changes in drug trafficking networks, stating that the networks appeared to aim mainly at the border areas of southern California and Arizona, and that the traffickers also are taking advantage of millions of illegal aliens who cross the United States each year, many of whom readily take extra cash as drug couriers.

What does a shift like this in drug distribution network mean for INS in terms of planning for reallocation of resources? Mr. Wray, do any of you have any idea about that? Did you see the article?

Mr. WRAY. Yes, I did. Obviously, I think, as many people have pointed out, we've effectively lost control of the southwest border, and I think there are tremendous shortages in staff on the part of the Border Patrol down there. We've identified equipment problems that they have, as well as a whole host of problems.

Again, we haven't looked specifically at that sort of a law enforcement issue, but I think the climate is certainly there that would give you severe concern that that kind of a strategy would create more problem than we have already.

Mr. CONDIT. Ms. Yañez.

Ms. YAÑEZ. I did not see the article, and I have not studied this particular issue. But I would comment, as a resident of south Texas, that one of the issues is whether or not INS is the agency that should be dealing with the drug issue and the, basically, militarization of the United States-Mexico border, and tremendous concerns that I have about that specific issue.

Mr. CONDIT. Mr. Hankinson.

Mr. HANKINSON. I read that article with great interest, Mr. Chairman. I must say that I seriously doubt that INS has the administrative infrastructure that is necessary to transfer priorities and resources on a short-term basis.

Mr. CONDIT. Mr. Wortman.

Mr. WORTMAN. I would agree with that statement.

Mr. CONDIT. Thank you very much. That sort of wraps up the first series of questions I have, and I do thank my colleagues for bearing with me. I'm going to yield to Mr. Thomas and let him open it up for a round of questions.

Mr. THOMAS. Thank you, Mr. Chairman. I will try to be fairly brief in my questions and perhaps you can, in your answers, as well.

The overriding thing, I guess, especially for you who are inspectors and in GAO is, why haven't things changed? It seems to me that's a legitimate question.

Mr. Hankinson, let's start with you. Where did you get the information on which your statements are based today, and when did you get it?

Mr. HANKINSON. These are revelations, so to speak, from audits, inspections, and investigations we have conducted. Of course, we have been in existence now, it will be 4 years in existence and so it comes from those reports, from our everyday work with INS.

I must state, also, for the future, that we will be conducting 11 audits and inspections this fiscal year at INS. Approximately 70 percent of my investigative resources are directed toward INS.

Mr. THOMAS. But you're the inspector for the Department?

Mr. HANKINSON. For the total Department, yes.

Mr. THOMAS. By the way, I'm impressed with all of your statements and your approach to it. That's 4 years. The things that you suggest are fairly reasonable. I don't think there's anybody over there saying, "We want to run a sloppy show; we don't want plans; we don't want our information." Why do you think that 4 years has gone by and nothing has happened?

Mr. HANKINSON. I think INS recently has made some strides in certain areas. There is a fairly large number of issues that we have not even discussed here today, I'm sorry to say, but, even in some of those areas, some strides have been made recently.

Some serious problems exist. ADP systems, for example, or a financial management accounting system, for example. They take resources, they take time. They also take some continuity of management, as we have referred to before.

Why do we not see additional strides or gains in the circumstances in INS? I think maybe one would have to really defend INS and say the tremendous amount of people who are trying to come into this country—legally or illegally. I think that's a serious

problem that one must give attention to, and probably that begins with Congress. It is a very serious issue.

They—INS—become overwhelmed, and they are trying to slide from here to there. At the same time, the infrastructure isn't there and people change at the top, so it becomes almost an insurmountable problem. We are trying to plug that leak today. Priorities are everchanging.

Mr. THOMAS. Would you say in general there's been a significant increase in funding? If priorities had been different, do you think there's adequate funding to have accomplished some of these things, or are you saying it's strictly a funding proposition?

Mr. HANKINSON. No, it is not a funding proposition, and I think I can say that with some validity. Their budget is approximately \$1.5 billion this year. One-third comes from fee accounts. We have criticized them heavily for not increasing their fee accounts. This is a resource issue. It comes to what I have said, and repeated—I apologize—about integrated systems, financial management systems.

So it is not funding. It goes into training. It goes into hiring people. Who are they hiring? Are they doing proper backgrounds? Are they training them, once they come aboard?

There's another issue I'd like to speak of here. It is about even-handed discipline when employees should have that particular discipline. Most of all, though, in INS, I don't believe they have a proper accountability. There must be accountability in INS, and I don't think, from top to bottom and bottom to top, that we have the proper accountability.

There was a great decentralization of responsibilities in INS in the 1980's that is somewhat coming back now. Not the decentralization of operations—that remains—but decentralization of responsibility and accountability, because policy was at one level, operations was at another, and it was like the two did not meet.

Mr. THOMAS. I presume there is structure for accountability if you would insist on it.

Mr. HANKINSON. I think now there has been some restructuring which will help in those particular circumstances.

Mr. THOMAS. Thank you very much. Ms. Yañez, you were the transition person.

Ms. YAÑEZ. That's correct.

Mr. THOMAS. You're from Harvard.

Ms. YAÑEZ. Yes.

Mr. THOMAS. Who is minding the store? There have been a number of you here. That's a little observation there.

Ms. YAÑEZ. From transition or from Harvard?

Mr. THOMAS. From Harvard. [Laughter.]

You indicate, then, that the documentary we saw where the undocumented folks are allowed to go for several months before there's a hearing and perhaps don't show up again, you don't subscribe to that as being factual?

Ms. YAÑEZ. That's correct, because there are actually two tracks. A person can apply for asylum affirmatively, and it goes through the asylum officers—I could sit here and lecture on this, but to make it very brief—or a person is placed in expulsion proceedings,

whether it's exclusion or deportation proceedings, and then they would file an application for asylum before an immigration judge.

So there are actually two different tracks that people are on if they are seeking asylum in the United States.

Mr. THOMAS. What do they do with people they decide are not eligible to move right on through? They can't go home on the airline. The airline doesn't take them back, do they?

Ms. YAÑEZ. That's what I was talking about earlier.

Mr. THOMAS. We are short of facilities, are we not, to detain people?

Ms. YAÑEZ. I'm not sure that is true. What I'm saying is that people are being transferred from the places where they may be arrested to where there is detention space. As far as I know, there is detention space in various parts of the country.

If there is a determination, based on the facts of that individual who presents himself, that——

Mr. THOMAS. I don't mean to interrupt you, but when do you determine the facts?

Ms. YAÑEZ. When the person is being inspected.

Mr. THOMAS. When he walks off the airplane?

Ms. YAÑEZ. There is supposed to be an inspection, a review, and a determination of who this person is, what kind of a claim do they have, is the person likely to abscond, and is the person a national security risk?

Mr. THOMAS. You are suggesting that this person ought to be given a government-paid counsel, as well?

Ms. YAÑEZ. I am suggesting—and there is no right to government——

Mr. THOMAS. Didn't you indicate that in your statement?

Ms. YAÑEZ. That's what I said, that there isn't, in the system. I think that, when persons are represented, it makes a substantive difference in the process, because there have been studies that have shown that persons who have representation are more successful in their claims than persons who are not. I don't see that we as a system have anything to gain in having people——

Mr. THOMAS. Would you expect the American people would support that notion and pay for it?

Ms. YAÑEZ. I think that if we subscribe to a notion that we have a system that is fair and that grants due process through a legal process, then I would think that we would have to subscribe to it.

Mr. THOMAS. You don't think that we've treated the Haitians properly, either? How about the HIV group? Do you think they are not treated fairly, too?

Ms. YAÑEZ. On the Haitian issue, there are a couple of issues. One is, the HIV issue is whether or not persons who test positive for HIV should be excluded from the United States.

That gets complicated in the Haitian cases, because the persons who are and have been in Guantanamo are persons who we determined have a legitimate claim of persecution, and the only reason that they were being detained in Guantanamo was because they may have tested positive for HIV.

Would we have done the same thing in the 1940's if someone was fleeing Nazi Germany and they tested positive for HIV, would we

have sent them back? That's the question. I think that the answer is pretty clear.

Mr. THOMAS. I'm not sure the parallel is exactly right, but I get your point. One final question.

You indicated maybe volunteers could be used, when the other members of the panel have said that the lack of training and professionalism seems to be the problem. Is there a conflict there?

Ms. YAÑEZ. I think there was a little confusion on that. The volunteers to assist as advocates in these proceedings, not as INS employees.

Mr. THOMAS. I see. I misunderstood you, then. Mr. Wortman, I presume the reason for having political appointees in various government agencies is to be able to bring to bear the philosophy of the administration.

Mr. WORTMAN. That's correct.

Mr. THOMAS. Do you think that is not necessary in this agency?

Mr. WORTMAN. We have different traditions here in Washington. The FBI has a director, I think, with a 10-year tenure. We have a tradition at IRS, which I like, which is that the Commissioner is political, but always comes from the tax field.

Since the fiascoes in the 1950's about IRS, the political system makes sure the Commissioner is a CPA or a lawyer who has been in the field. That is interesting. Always from the field, always has credentials.

Then they come in and they can replace the deputy commissioner, but the deputy commissioner is always career. I really like that IRS model. INS would be served well with that.

Mr. THOMAS. You indicated your support or favor toward an independent agency.

Mr. WORTMAN. I'm reporting on a panel's deliberations. I don't want to get too identified on this matter, sir. But I chaired that panel that day of people I respect, names that many of you here would recognize—like Doris Meissner and Frank Keating—people who know this business. They went through all those alternatives, and held no hope for coordination, exhortation mechanisms or processes, whatever, held no hope at all.

They worked their way through and, as they looked at the North Atlantic Free Trade Agreement and what that might entail for our great Nation, they concluded, "We better put everything in one agency, not try to invite too many political fights about the details of that, and let that new agency evolve into a more effective structure."

Mr. THOMAS. There is relatively little discretionary decisionmaking at the agency, isn't there? You mentioned maybe some discrimination on some groups. Doesn't the law pretty well define what we do? Is there a great deal of discretion on the part of the agency as to how they handle people? Ms. Yañez?

Ms. YAÑEZ. Yes, there is.

Mr. THOMAS. Why? Isn't there a law?

Ms. YAÑEZ. It depends on the particular issue but no, there's definitely a wide latitude of discretion in the decisionmaking by any particular officer handling any particular case.

Mr. THOMAS. More than there should be?

Ms. YAÑEZ. I think that, in certain situations, I would say yes.

Mr. THOMAS. Thank you, Mr. Chairman.

Mr. CONDIT. Thank you, Mr. Thomas. Mrs. Thurman, do you have some questions?

Mrs. THURMAN. Yes. Mr. Hankinson, I have to tell you, this is my first hearing on this, although I come from the State of Florida, which obviously is very concerned about this issue, from a funding issue, of how it has had an impact on the States.

One of the things that seems to really bother me through all of the testimony—and I sat through it on an EPA yesterday—is that you and Mr. Wray are supposed to be giving ideas and suggestions. We have other people that have been studying this.

Yet I go through your reports about the issues—the fee issue; you've got a detention facility issue in here that actually happened in Miami where you had about 55 percent capacity and yet somebody recommended to build a new one. Yet your report says that you could have saved \$3.3 million to make it cheaper.

I guess what I don't know is and what I don't understand is, how do we keep coming back to these same things? I haven't read reports years back but it seems to me at some point this ought to end. Once you find it, you ought to be able to fix it. Can somebody tell me that?

Mr. HANKINSON. That's an excellent question. Let me attempt to answer that, and let me explain something. When we conduct these inquiries, whether it's through an audit or inspection, we make specific recommendations.

Mrs. THURMAN. To whom?

Mr. HANKINSON. To INS. And we do not resolve—that's a proper term—that recommendation until No. 1, they say they are going to carry out the recommendation, then, No. 2, we keep it open until they actually take some affirmative action.

However—and here comes the difficult part—then come in all those issues we have talked about: Resources, direction of resources, priorities, changing priorities, change in the top personnel at INS. So all of a sudden this recommendation, 25 recommendations we make on one particular issue—detention facilities, for example—and I think that's appalling.

That shows a lack of planning. Remember what I said earlier. They lack an infrastructure. They lack proper information systems, ADP systems. How do you make decisions when the information you receive one, may be faulty, two, is not timely? So all of a sudden, it's a morass.

It's going to continue to happen again until they build up their infrastructure, until they put these systems into place, until they train their people properly. It is just not one issue. It's a multitude of issues, all of which have an effect on one another.

Getting to the point, they may start some project. They may even say, here, they contracted for this site, when they have no detention facilities available in New York City, but yet they may have some available where they don't need them, because it was improper planning based upon inaccurate information, and by the time they received the information, they no longer needed the site. It was not timely.

I don't know if I answered your question, but it's a very difficult one because of all those circumstances I have described.

Mrs. THURMAN. Let me take it a step further, then, maybe for the chairman and for this subcommittee to consider later on. At some point, Congress is going to be responsible, as well. We get the reports, we see them, we know where things have happened.

As we look through this next couple of months, or I have a feeling that, when you finish this next 5 months, we're going to see some very similar kinds of things here.

So in looking at the vision of this Department or agency, what could you suggest—and any of you can jump into this—in steps, positive steps that we might take to help in incorporating these ideas and issues so that we don't continue to see these same kinds of things come before us?

Mr. HANKINSON. I will specifically be recommending to the Attorney General some areas that she may want to give her specific attention, and that goes into infrastructure—specifically into infrastructure—because, first of all, it will take some additional resources, it will take some time, but it will pay, I believe, long-term benefits. I have mentioned ADP systems, the financial accounting system.

We have found some very serious issues, for example, that are lacking in fee accounts. We believe they could take in a couple hundred million additional dollars a year in fees alone, but until this is specifically addressed—and it will take some time—we're not going to see a great deal of improvement in those areas, and that goes also into training, backgrounds—upgrading and conducting backgrounds of employees as required by law every 5 years.

Mrs. THURMAN. The report says 10, 15 years later.

Mr. HANKINSON. Right. That's correct. And at one time, maybe 70 percent of the people holding top secret or secret clearances did not have a background conducted. I think that's important if those people are the ones who are at the border and working with individuals coming into this country from foreign areas.

Mr. WRAY. If I might add, I think one thing that certainly would help the situation is more congressional oversight, such as this hearing. We did a management review of INS in 1991, which took a head-to-foot look at the agency and covered a lot of these problems.

Then, obviously, it would be very hard to overstate how difficult the problems are. These are a mix of tremendous logistical, management problems, policy issues.

One recommendation we made is that congressional committees conduct more oversight hearings and sort of bring the folks up here. As other witnesses have pointed out, part of the problem is a lack of central leadership. The leadership changes a lot. The agency is compartmentalized and segmented.

Somebody has to take charge initially and try to take a more holistic look at the agency. I would suggest that congressional oversight is a good way to stimulate that process.

Mr. HANKINSON. If I may add, I neglected one important item—accountability, if I may repeat that. It is important that the personnel in INS be held accountable, like they are elsewhere.

Mr. WORTMAN. Let me repeat myself. The good work that the inspector general has done and that GAO continues to do on an orga-

nization like INS can become very repetitive unless you deal with the executive leadership of that organization.

The Democrats on this committee might try to convince this new administration to find an extremely competent commissioner and limit their political appointees to that commissioner and one or two assistants, and get a career person in there as deputy.

I just pointed out in my testimony, from what I know, they lost a very able associate commissioner for operations—the key operating job. Whenever that job changes, work on these infrastructure problems ceases for a while, and it has to be reprioritized by a new leader. So that's the emphasis I want to give.

Ms. YAÑEZ. I will just say that we made very specific recommendations on infrastructure, organization, management and personnel directly to the administration. I'm not sure that I totally agree about which persons within personnel should or shouldn't be political appointments.

Mrs. THURMAN. I for one just want the chairman to know that I hope we do have a little bit more oversight and that I would hope, at least during the time that I'm here, however long that might be, that I don't have to keep reading what I think have been reports all the time of the same kinds of issues. I think it's important. And I think we also have to be held accountable.

Mr. CONDIT. I think that's not only a challenge to you folks but it's a challenge to the chairman and the members of this subcommittee, too.

Mrs. THURMAN. Absolutely.

Mr. CONDIT. We will take you up on it. Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. I appreciate the testimony of each of you, but particularly yours, Mr. Hankinson. I've heard a lot of inspector generals, and often they're out hunting for headlines.

Yours is the most thoughtful, thorough testimony I've ever heard out of an inspector general, so I commend you on really immersing yourself and being helpful to the particular agency.

Mr. HANKINSON. Thank you very much.

Mr. HORN. Let me just ask one question which, Mr. Chairman, I will probably ask of all witnesses, especially the former commissioners and the current leadership. That is along the line of Mrs. Thurman, but I would break it down where I'd like to know what has the Immigration and Naturalization Service asked for in resources? Has the Department of Justice at the Attorney General level supported that or refused it over the years?

Has the Office of Management and Budget supported whatever the Attorney General has asked or refused it? And let's carry it up to Congress, both authorization and appropriations. What has happened here?

I'd like to see us fill out a matrix as to who killed Cock Robin, if you will, and I suspect we've got some of the guilt in all of those parties along the line over time. Now, let me get to just a few things, and we can fill in some of these with the record, if you wish.

One of the things that concerns me is the impact of illegal immigration on minority populations in the United States. That's what got me into this subject in 1975, when leaders in Watts pointed out

to me that young black youth and Hispanic youth in Watts, CA were no longer able to get jobs because of the flood of illegal immigrants—in our case, primarily south of the border.

If you go to Detroit, it's primarily north of the border. If you look at some that are coming in now with the asylum racket, if you will, in many cases, that's through airplane, ship, and you name it. So we have a major problem, and I think the word was used correctly that INS has simply been overwhelmed and has never caught up with what the new dimensions are.

To get some facts on the record, Mr. Chairman, I'd like to have, No. 1, what, for the last several years, is the legal immigration into the United States? Is it true that it is, at the legal level, roughly three-quarters of a million, as I remember—equal to all the countries in the world, in terms of their legal immigration?

What is the illegal immigration? What, if any, are the data as to competition with American citizens—minority American citizens who are already here—in terms of jobs? It's certainly clear in southern California, and has been for two decades, that the argument that American citizens do not do that work and, thus, we need illegals is utter nonsense.

The last time I looked at the occupations in the occupational directory of the Department of Labor, every single job category was a majority of American citizens if you add the data up nationwide; and only in the border areas of Canada and the United States, Mexico and the United States, do you find it different.

We all know the exploitation that is taking place there and the cheap labor source that has pushed other deserving American youth—where you have maybe 40 to 55 percent teenage unemployment in minority areas of most cities in this country—pushed them out of jobs.

I think, Mr. Chairman, we need some exhibits here that try to lay out the facts on the situation. So let me now ask Ms. Yañez, do you know of any job categories where American citizens will not do the work in this country and, if so, what are they?

Ms. YAÑEZ. I know that there have been many studies that have been conducted on that particular issue, and I think the studies came to a conclusion different from the one that you have come to. I don't have those with me, but I would be glad to supplement the record with those studies.

Mr. HORN. Good. Let's have that exhibit and then, perhaps, an exhibit on some other studies that have been made by economists on the subject.

Now, what I also would like, Mr. Chairman, since asylum has been mentioned by several of us, including the witnesses, just what are the data, following it through the process, of how many have landed in the last 2 years. At what level—you mentioned there's sort of a two-route level—have they been granted either asylum, not asylum, et cetera?

If they have been not detained—and most of them have not—and gone into the American society where any of us can hide for years, when they have been called for a hearing, have they showed up? If they haven't, when did they show up? And, simply, what are the data?

I think we need to get the official statistics of INS in the record at this point.

Mr. CONDIT. Without objection, the information and studies that you request, Mr. Horn, will be a part of the record, and if the witnesses have any additional information to add, they're welcome to do that as well.

[The information can be found in the appendix.]

Ms. YAÑEZ. My understanding, in terms of statistics, is that in December 1992, the statistics showed that 85 percent of the persons who were called for asylum interviews did, in fact, show up for hearing. At Harvard, we are currently conducting a national asylum study that will issue a report in June that we would be happy to make available to this subcommittee.

I just want to use one caveat, that much of the statistics that you're probably going to receive from the INS, I think you have to be careful in how you interpret those statistics. One, with regard to the numbers of persons—you asked about the numbers of persons that may have come into the country illegally. You have to remember that the only statistics are apprehension numbers and, in terms of apprehensions, three apprehensions could be the same person. So those numbers are not very credible.

In terms of whether or not persons appear for their hearings, it's problematic to make a determination because there have been problems in the system of notifying people of their hearings, and whether notice goes to the lawyer, whether notice goes to the person who is supposed to present himself, whether notice goes to the obligor on the bond. So whether somebody may or may not have appeared for a hearing, you would have to look at it in terms of all of those issues, as well.

Mr. HORN. I have no objection to the exhibit being broadened to find out where did INS send the notice and, based on those categories of individual, lawyer, bond holder, et cetera, let's see what the response rate was. I'll leave it to the staff of the subcommittee and the INS to work that out.

Since we're into asylum, let me just ask one question that's commonly said—I'd like to know what the answer is on this—that individuals get fraudulent visas, board American airlines or international carriers, land at Kennedy or LAX or wherever, and they have destroyed the visas while on board and they come off and just say "I want asylum."

Now, I can't understand why the documents they've presented to get on board in Paris, London, Montreal, wherever, cannot be checked there by INS individuals, held by the airlines while they are flown here, and given to the Border Patrol or other inspectors of INS where they land. I don't understand why we just seem to drift along permitting missing documents, when they obviously needed them to get on board, or the airline wouldn't have let them board, and they don't have them when they land.

I'd like to see, is that a myth or is that factual? If so, it seems to me a very simple administrative solution. Do you have any comments, as people that have investigated the situation?

Mr. WRAY. We have looked at that issue. I don't have any statistics. We've recommended, in one of our reports on detention, that the best solution, or one of the best solutions would be to prevent

aliens from entering the country in the first place, and that greater emphasis should be given to preclearance processes overseas. I think INS generally concurred in that.

I think there are some logistical issues. That's one of the priorities and funding issues that you have to look at. You would have to target the airports and decide to what extent that would be cost effective; but that is an avenue that I think INS is aware of and one that they should pursue, greater use of preclearance facilities, particularly with the tremendous problem they face here in terms of detention, lack of space, and so forth.

Mr. HORN. Mr. Hankinson.

Mr. HANKINSON. We are nearing completion, at this moment, of an audit we are conducting of this program of placing INS inspectors overseas for preclearance. I hope to have that done—at least a draft—in approximately 30 days.

Also, as I was reminded by Mr. Wortman, if, in fact, INS had a proper communications system when a person boards in London with the proper visa, that would be relayed through, say, JFK in New York, and so that would preclude or eliminate that factor of people destroying documents on board.

Mr. HORN. Right. Do we keep any data as to how many have destroyed documents? We know they had to go through clearance at one end. It seems to me we could count what's missing.

Mr. HANKINSON. I hope to have some data on that. As I previously stated, we are just starting on an inspection of the hearing process, and I hope that we will be able to look at that in this particular inspection.

Mr. HORN. Very good. Mr. Wortman, I noticed you said in your statement here—I'm not sure you read it:

In summary, the only organizational recommendation that we made with which the Department and INS differed was the one concerning regional officers.

We believe the agency is too large and dispersed to be effectively managed from Washington. They, however, reduced the regions to administrative support arms of headquarters. We would argue for a regional management level with regional directors clearly subordinate to headquarters in terms of policy and priorities. This has not always been the case in INS.

I wonder if you could elaborate on that as to how you see that interaction between central headquarters and region working effectively?

Mr. WORTMAN. I think the model that generally we in the public administration community buy into is one of decentralized operations in order for the government to be more responsive in terms of its decisionmaking. That's like you would find at the Bureau of Prisons with its six regional offices working with the headquarters to supervise 70 Federal correctional institutions.

In the case of the Bureau of Prisons, there's no question but where policy emanates from. Here again, as I'm sure Mr. Hankinson would agree, that history isn't so clear at INS. There were, in the second term of Reagan, some regional commissioners who issued policy on sensitive topics. If you get inside the INS, you hear these amazing anecdotes about some of these regional commissioners.

I think Commissioner McNary, in getting that evidence—and I may have done the same thing—thought he had to curb those regional offices and those regional commissioners so that these orga-

nizational arms would be more responsive to headquarters and not further confuse national policy. I understood a little bit where he was at. But I still think, in the long run, this organization should have strong regional offices, maybe even more than four.

Mr. HORN. Last question, and maybe you're not completely the panel to answer it, but it is one commonly made.

Given the fact that INS is overwhelmed, simply does not have the human resources to do the kind of job most of those in INS want done, and that we have lost control of our borders, should—two things—one, more individuals out of the U.S. military be assigned to help the Border Patrol? No. 2, should State and local police again get involved?

As I recall, for at least 20 years, State and local police, at least in California, have nothing to do with apprehending illegal immigration individuals.

Ms. YANEZ. If we started out by saying that the immigration laws are as complex as the tax code, just on that basis alone should tell us it would be terribly ill-advised to have other law enforcement agencies enforcing these administrative laws.

I can tell you that I will separate myself for a moment as a Latino and someone who grew up in the Southwest and who has to remind people that this border was established when our communities were already very much living there, and divided families and societies. To militarize the border would certainly not enhance or improve relations with our southern neighbor in Mexico, would certainly be contrary to the provisions and the spirit of NAFTA, and it certainly would be a coercive and oppressive action.

You said that you were concerned about the minority constituencies in the United States. That would absolutely be the wrong message. One of the issues that we had discussed earlier is whether or not there should be other agencies that should be engaged in enforcing the criminal laws of this country and perhaps even the criminal immigration law violations, and whether or not it should be in fact the Border Patrol or some other agency.

To bring in the military or to bring in more local police into the formula I think would foment absolutely the worst reactions from the minority communities.

Mr. HORN. Yes.

Mr. WORTMAN. I would like to distinguish between the agency being overwhelmed and the U.S. Border Patrol. When we did our look at the INS, we concluded that the Border Patrol was an outfit that had a good esprit de corps, and a high degree of professionalism.

It needs to be re-equipped. I think the inspector general talked about that. Its automobiles, its communications equipment, in many cases are obsolete. But I think that's a good outfit. I think you could build its capacity and its capability.

Mr. HORN. Very good. Mr. Wray.

Mr. WRAY. I think also, in the first instance, what we should try to focus on is demanding the best that we can out of the existing structure. There certainly is ample room for improvement that we see with the proper leadership and the proper structure.

GAO really hasn't looked at the broader issues that you address, but I think fundamentally our view would be to try to make INS

as efficient as it can be and see where we are there and then. As other people have suggested, we certainly feel that the people in the agency are hard working, diligent people and, if we can support them and straighten out some of the management issues, perhaps that will go a long way to addressing these concerns.

Mr. HORN. Thank you, Mr. Chairman.

Mr. CONDIT. Thank you, Mr. Horn. I'd like to follow up. Ms. Yañez talked about NAFTA. I just wonder, Ms. Yañez, what role do you think INS should have in the NAFTA discussions?

Ms. YÁÑEZ. Anything that we say about NAFTA, I think, is terribly speculative with relation to immigration, whether it's legal or illegal immigration. Although I didn't have time, I would like to offer the committee a study done by Professor Doug Massey from the University of Chicago on the issue of whether or not NAFTA would have any effect at all on illegal immigration, because his study found that there are actually sort of three tiers of immigration from Mexico.

There's a migration from the rural areas into the urban areas in the interior of Mexico; from the urban areas to the United States-Mexico border, where the maquiladoras are; and then, when they find the wage differentials, into the United States.

His conclusion is that NAFTA may, in fact, in the short run—and we can't seem to define "short run"—will increase illegal immigration into the United States and that, until there is an equalization of wages on both sides in some manner, that you're not going to have sort of that balancing out that people hope for, although that may happen if, in fact, NAFTA does improve the Mexican economy, but that may be 10 to 20 years down the road.

In terms of legal immigration, my understanding is that the provisions of NAFTA do not provide for the same type of legal immigration and type of visas for Mexico that it allows for Canadian citizens, and I think that that is an issue that needs to be looked into in terms of NAFTA.

Mr. CONDIT. Thank you very much for that answer. If you want to submit the report or study, you're welcome to do that and that will be part of the record.

Mr. WRAY, I'd like to follow up with you. Do current locations of detention centers—the INS district office, Border Patrol office, INS regional office—make sense? For example, why is there a detention center in Denver instead of increasing the capacity at JFK?

Mr. WRAY. INS, as far as we can determine, really hasn't looked at the location of its detention centers for some time. I think there are obvious questions there.

We found, for example, that people who came into New York were actually transported to Denver because of inadequate detention facilities in New York; and is that a good tradeoff? I think the short answer, from our point of view is, that this is one of the many issues that INS needs to look at.

It hasn't been studied recently; and perhaps the location of the centers made some sense when they were originally put in place, which may have been decades ago, but they need to be revisited now.

Mr. CONDIT. While we're on that subject, how about international offices? For example, we have offices in Europe but we don't have offices in South America.

Mr. WRAY. That's another issue that INS, I think, is looking at, and there are some logistical considerations. Basically, I think the offices overseas are designed to accommodate refugees who apply overseas. That tends not to happen in Central America. The more common pattern is that people enter the country and then claim asylum.

I think again that fits in with the broader picture of a need to look at where INS should locate its offices for a variety of purposes. We touched earlier on preclearance, which is certainly something that should be explored more. If you can head people off before they get into the United States, that would seem to be in everyone's interest.

Mr. CONDIT. INS has access to user fee accounts. How effectively does the INS manage these accounts in your opinion, Mr. Wray?

Mr. WRAY. We're looking at that right now. We have some ongoing reviews looking at the process for handling the user fees. Our preliminary read is that conditions are better now than they were a couple of years ago. There were egregious funding problems some years ago, with INS transmitting bundles of cash to banks, delaying a great deal before it deposited user payments.

The most egregious features have been remedied somewhat. We do think that they need to do a better job of allocating direct and indirect costs. They need a reliable cost-accounting system to be able to do that, and they do also still need to improve their internal controls.

I guess GAO tends to say they've made some progress, but they still have a long way to go, in our opinion.

Mr. CONDIT. Thank you, Mr. Wray. Mr. Hankinson, in your December 1992 user fee report, you estimated that INS was losing \$114.8 million in fees because INS did not have the ability to collect valid cost data to identify fully the funding costs. What will be required to correct that, in your opinion?

Mr. HANKINSON. What we have said to INS is that they need to identify and maintain a central inventory of all goods and services that they provide so they can charge it against the user fees. Then second of all, what they need to do is develop and implement policies to allocate administrative expenses and overhead between the fee accounts and appropriated funds.

Then, when they get the first two in order, they can establish a firm cost basis for the user fees. How far are they away from that?

Mr. CONDIT. You don't know how long that will be?

Mr. HANKINSON. I think it's going to take some time, because they don't really have an adequate financial accounting system. What they can do in the meantime is do a better job of estimating the costs, and then they can appropriately charge the user fees.

Mr. CONDIT. Mr. Horn.

Mr. HORN. I just have one question on the type of data gathered. I've had some experience with Justice's Department of Program Review when I was chairman of the National Institute of Corrections which, as you know, is sort of an independent agency but administratively housed in the Bureau of the Prisons.

What bothered me is sometimes they seemed to be looking at what they could count, and it might not have been important. I think that's the problem all of us have who have struggled in any administrative organization with what do we mean by management data?

I wonder if your office, Mr. Hankinson, has looked at that and, in talking and interviewing a variety of people in INS, has come up with some key indicators that any good manager ought to have that they simply haven't worked into a system of how you gather that data relative to management decisions, which are far different, as you know, than financial decisions.

Mr. HANKINSON. Right. They do lack an integrated information system itself, apart from a financial accounting system and integrated systems in that particular area. That really goes to some of the overall problems they have.

In other words, they have certain managers who have a need to know, that cannot gather data because it is not integrated in various systems, from the regional office, the local office, the office on the border, or the district office. So therein lies the problem.

What it does is it translates into these issues of how can we have a detention center, that may not have as great a need in a certain city, in another city where, in fact, they are filled to capacity. That integrated information system goes to the whole ADP systems.

I want to say that I think they're making some progress in this area, but it's going to take time and it's going to take resources. There is some reason or room for hope in this and in the financial accounting area, but I have to repeat, it's not necessarily going to be this year, next year, even the mid-1990's, and it will take some directed resources into this particular area.

I only say, to repeat, that when you have inaccurate, inadequate, or late information, how do you make important decisions and especially priority decisions?

Mr. HORN. Thank you.

Mr. CONDIT. Thank you, Mr. Horn. We've been at it for 2 hours. I would like to ask the witnesses if they would object to us submitting the balance of our questions in writing and, hopefully, you will respond. We'll leave the record open for 14 days and members can submit their questions.

We really appreciate all of you being here. You did a great job and we appreciate it very much. We'll take panel two. I apologize, but we need to move along.

We're going to have in a few minutes a series of five votes consecutively, so we want to try to get started, try to take the opening statements, and then we'll probably adjourn, let people go to lunch, and if you gentlemen would come back, we would appreciate it very much.

We have a policy here to swear in all witnesses, so I'd ask you to stand.

[Witnesses sworn.]

Mr. CONDIT. Thank you very much. We appreciate both you gentlemen being here today, and we'll start out with Mr. Castillo, who was the Commissioner from 1977 to 1979. Sir.

STATEMENT OF LEONEL J. CASTILLO, FORMER COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. CASTILLO. Thank you. Chairman Condit, in view of the testimony of some of the prior witnesses, I'm going to rearrange my statement to try to make it brief, but nevertheless, cover the major points.

I think the major problem we have here is that we have an agency that's torn in several directions. I think until we define the mission, we can't define how to structure it. I think the mission should be more clearly defined.

Specifically, we've heard a lot today about Service versus Enforcement. It's a recurring theme. I believe the mission of the Immigration Service should be redefined so that we add another step, another item to it, and that is that we actually assimilate or integrate the people that we bring here through this tortuous process.

The way it is now, we're bringing them here through these many obstacles and all these problems we just heard about. We're bringing them here in record numbers of about 1 million a year, and it appears that's going to continue for at least a decade because we have that many people waiting.

So it would seem to me that we should sharpen the focus of the Immigration and Naturalization Service so that it becomes, as far as services, strictly service, and that the Border Patrol should be moved within the Department of Justice. I don't believe in this massive reorganization, because I think that would take 4 years, a lot of political capital would be spent, a lot of money, and we would never finish.

It would seem to me that if we could sharpen the focus and concentrate a professional corps of persons on the issue of service—and that deals with all the issues of asylum, adjustment, and so on—I think it would be much better.

I also believe that the number of persons that we have processed—because all we're doing now is processing people—is not fully assimilated. We're simply bringing them in and then we're leaving 10 million people as green carders or persons with immigrant status, and that number continues to grow, and we never actually naturalize them, even though we're called the Immigration and Naturalization Service. We should actually complete the process.

It's my view that we would do better if we focused on that, made that a full professional, well-trained group, and placed the Border Patrol within the Department of Justice so as to avoid this endless bickering about reorganization, and let the Border Patrol concentrate on the enforcement side, as it well does. I think they could link, then, with the Department's other agencies, such as the FBI and DEA and those other groups that are in law enforcement.

The other thing that would happen when you did this, I think, is that professional careers would come through a clear career ladder. The way it's been for years at the Border Patrol is that the Border Patrol provides the leadership and the staffing of management at INS. Many major management positions at INS are held by former Border Patrol agents, which is not necessarily bad, but which clearly comes from a different orientation than people who come from a service background.

I would clearly and strongly suggest that be done. I think, unless we do that, we'll have this endless battle about where should the resources go and how do you approach an issue and how much money goes for this versus that, and we really won't be able to deal with it.

I'm another one of those advocates for preclearance or preinspection. I believe that, unless we do things of that sort, we'll never hire enough people and we'll never build enough airports and we'll never be able to handle things like NAFTA.

NAFTA, I'd like to say just a word or two about. I think that NAFTA, unless it's rethought, will cause enormous pressure on already-stressed inspection points at the border. NAFTA is going to move more people to the United States-Mexican border.

So I would suggest that we try, as has been tried in the past on a very small scale, the development of free trade zones, and simply move the inspectors from the border a little further back inside El Paso, or whatever the border place may be, and then you don't have to inspect a million people. They simply come, as they do every day, to shop or do whatever they're going to do in the United States, and go back home every night. But we inspect them anyway, even though they do this every day for all their lives.

It would seem to me to make sense to just move that inspection point back at certain places, and allow them to shop, as they do anyway, and save yourself a few million inspections and a few thousand inspectors, and a lot of money. I think that's probably the only way that I see that we can handle that traffic.

The other business is that the INS position on the Service versus Enforcement issue is not clear. It's constantly confused by people talking about apprehensions versus the number of asylees and detainees and so on. I think we could make it clear and give a clear focus to where INS should be in terms of human rights and human development.

I believe that, unless this is done, this debate and this concern will continue, because we're asking INS to be both pitcher and catcher at the same time, and it simply can't work. You can't move that fast to catch the ball.

That's my basic recommendation. From that would flow all of these management questions and some answer to them, because when you talk about structuring regional staff, and yet regional staff is going to handle both Border Patrol and amnesty programs, you're putting them in a very difficult position, and an almost impossible position.

But if you say that Border Patrol is flowing straight through, through the Attorney General's departmental units, then you have a very clear line. You know who is in charge of what and you can pinpoint responsibility and you can pinpoint accountability, and no one can escape, and you know exactly where the fees go and you'll know exactly where your resources are. I think the way we're going now, we're just confusing the issue by mixing all of this together.

[The prepared statement of Mr. Castillo follows:]

SUMMARY OF TESTIMONY TO
THE INFORMATION, JUSTICE, TRANSPORTATION, AND AGRICULTURE
SUBCOMMITTEE OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

by

Leonel J. Castillo,
FORMER INS COMMISSIONER

Tuesday, March 30, 1993

Hearing on the Management, Information, and Structure
of the Immigration and Naturalization Service.

SUMMARY:

- THE MISSION OF THE AGENCY SHOULD BE REDEFINED TO INCLUDE "FULL AND RAPID ASSIMILATION" TO THE TRADITIONAL ONES OF : FAMILY UNITY, LABOR NEEDS, AND POLITICAL REFUGE. THIS NEW MISSION WOULD NECESSITATE POLICIES AND PROCEDURES FOR ADJUSTMENT, ASYLUM, AND NATURALIZATION.
- THE INS SHOULD REMAIN AN AGENCY OF THE DEPARTMENT OF JUSTICE, BUT THE BORDER PATROL SHOULD BE MADE AN INDEPENDENT UNIT.
- INFRASTRUCTURE CHANGES AT THE BORDER AND AT VARIOUS POINTS-OF-ENTRY COULD RESULT IN GREATER EFFICIENCY. IN SPECIFIC TERMS, THIS INCLUDES:
 1. PRE-INSPECTION OF FOREIGN VISITORS.
 2. FREE TRADE, INSPECTION-FREE ZONES, OR EXPEDITED INSPECTION ZONES ALONG THE BORDER.
- THERE SHOULD BE AN ANALYSIS AND PROJECTION OF THE EFFECTS OF THE NAFTA ON THE FLOW OF MEXICANS AND CANADIANS INTO THE U.S..
- HUMAN RIGHTS, AND HUMAN DEVELOPMENT, SHOULD BE AGENCY WATCHWORDS.

TESTIMONY TO INFORMATION, JUSTICE, TRANSPORTATION AND
AGRICULTURE
SUBCOMMITTEE OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

by

LEONEL J. CASTILLO,
FORMER INS COMMISSIONER

March 30, 1993

INTRODUCTION

Chairman Condit, Subcommittee Members, and fellow panelists, I appreciate this opportunity to testify on the questions of management, organization, and structure of the Immigration and Naturalization Service (INS).

The views that I am expressing here today are solely my own, and not necessarily those of any organization or group with whom I have been or am now affiliated. These views are shaped by my experience as Commissioner, and by over a decade as a volunteer worker with grassroots groups, as an unannounced "visitor" to INS offices, and as a concerned citizen.

There are four points that I wish to discuss with you.

These are:

1. "Full and Rapid Assimilation" of immigrants,
2. Making the Border Patrol an independent Agency within the Department of Justice,
3. Increasing the use of Pre-Inspection; Creating Free Trade Zones; and Analyzing NAFTA. and,
4. Making Human Rights and Human Development Agency watchwords.

I. "FULL AND RAPID ASSIMILATION"

The traditional mission of the INS has been: to unify families, to provide needed labor when appropriate, and to provide political refuge for oppressed people. These are all noble and great purposes which have been upheld by thousands of INS employees for decades. The entire world knows of our commitment to these principles. Despite numerous problems at home we have brought and are still bringing millions of qualified immigrants to our land.

I would like to suggest that it is no longer enough to simply "process" people into the U.S. as permanent residents. This policy has resulted in the development of a pool of approximately ten (10) million persons in our country who are legally here, but who are not full participants in the life of our country. They work, pay taxes, serve in the military, but cannot vote or serve on grand juries. They are also barred from certain jobs, certain educational programs, and from full participation in social security. Ironically, their success in the work place will help assure us somewhat older Americans that Social Security will have funds available to provide benefits to us when we retire.

The immigration and Reform Act of 1986, which legalized several million persons, has greatly increased the pool of permanent residents eligible for Naturalization.

It is not in the Nation's best interest to allow differences in status, privileges, or rights to exist. Our society has too many divisions based on race, religion, creed, sex, and other factors.

Failure to add "full and rapid assimilation" to the mission of INS could lead to a growth in the number of non-citizens in our country to 15,000,000 - 20,000,000 persons within a decade.

On the other hand, adoption of a policy of full and rapid assimilation would build on the positive experiences of the Amnesty program (which required English classes) and of other countries, such as Israel, which don't let immigrants simply become "Green Card" holders, and then leave them alone.

Rapid assimilation would give us the rationale to make our Naturalization laws and procedures more streamlined, efficient, and generous. There would be better reasons to: Naturalize immigrants with physical or developmental disabilities; allow waivers from the English language proficiency exam for older immigrants; promote citizenship day and citizenship in general; and build supportive relationships with educational institutions.

This policy change would also stimulate and guide procedures and policies in adjustment, asylum, and naturalization. For example, at present, there are over a million persons with approved petitions who are waiting abroad to immigrate to the U.S.. Under "Full and Rapid Assimilation" special programs in language and civics could be set up for them-even as they wait abroad. Similar thinking would permeate our programs of asylum, and to some extent, even in the deportation and detention of persons who are certain to immigrate at a later date. Hopefully, it would even dictate a more rapid processing of petitions for immediate relatives who enter outside of the visa quotas.

II. SPLITTING OFF THE BORDER PATROL

One consequence of this new emphasis on full and rapid assimilation should be an emphasis on service by the Immigration and Naturalization Service.

However, since enforcement of our immigration laws is an essential element of the very definition of sovereignty, we must maintain a professional, well-trained Border Patrol.

It is my opinion that the Border Patrol should be an independent entity within the Department of Justice. I feel extremely confident that the Border Patrol would operate well within the Department. The Border Patrol is among the most bilingual of all law enforcement agencies. They also have developed unique skills in dealing with foreign persons of all types. Having them as a separate division within Justice would enable them to link more easily with the FBI, the Bureau of Prisons, and the other "law enforcement" units.

This division of responsibilities, when accompanied by career linkages to other D.O.J. divisions would also widen the pool of potential multilingual, multicultural persons for management jobs throughout the Department.

The unending debate over dividing funds at INS between "service versus enforcement" would be eliminated.

To ensure a continuing commitment to enforcement the Border Patrol would be headed up by a person equal in rank to the Commissioner of the INS.

Under the current system many of the top management jobs at INS are held by former Border Patrol agents. Under the proposed re-alignment, over time, most of the top management jobs will be held by persons who have risen through the ranks of a service agency, with a resultant shift in orientation.

III. SOME IDEAS ON EFFICIENCY AND INFRASTRUCTURE

There are numerous studies and reports on the management of the INS. My purpose is not to rehash the work of the GAO, or the Inspector General.

There are, however, a few ideas of such potential merit that I feel compelled to bring them to your attention.

- Pre-Inspection:

In order to inspect the millions of persons who will be entering th U.S. throughout this decade we will have to spend millions of dollars on airport reconstruction and on personnel. Rather than do this, I suggest that we make a concerted effort to greatly expand our pre-inspection program, which calls for inspection of passengers at the point of embarkation, rather than disembarkation.

This would enable a more efficient use of the usual hour spent waiting for the flight to leave, and it would eliminate all lines upon arrival. It would be more like flying from Washington, D.C. to Los Angeles.

- Free Trade: Non-inspection Zones:

One impact of the North American Free Trade Agreement will be an enormous increase in traffic at the border. In view of the serious congestion, pollution, and immigration/customs problems which already exist on the border, it is possible that NAFTA could add to the problems on the border. One approach to explore would be that of building or designating free-trade, non-inspection zones at specific points along the border. All traffic into these areas would be free and unregulated. If something like this is not put into place, then NAFTA will require the hiring of thousands of inspectors, and the building (at heavy cost) of new bridges and roadways.

There should be an analysis of the impact of NAFTA on immigration

IV. HUMAN RIGHTS AND HUMAN DEVELOPMENT

In my opinion, the Service should champion the cause of human rights. It should be the advocate of fair and just treatment of refugees, asylees, and immigrants.

Not only should the Service assist with expedited processing; it should link hands with human development efforts in the areas of health, education, training, women's rights, and legal rights. This work should be done at INS offices (both at home and abroad), at detention camps and in refugee centers.

In practical terms this would mean that INS officials would have more resources to assist persons with asylum petitions and would help refugees or asylees by referrals to programs associated with the "full and rapid assimilation."

Further, INS detention camps which are used to detain hundreds of thousands of minimal security inmates, would offer mini-courses designed to help persons live better in their country of origin.

Non-governmental groups and immigrant aide groups would be invited to participate in these programs.

CONCLUSION

In this short presentation I have not touched on many other subjects of great interest and concern. Most questions of organization, structure, and management cannot be dealt with until the overriding issue of service versus enforcement is dealt with.

My goal was to convince you that the INS should be an agency dedicated to Service - not enforcement.

Thank you for considering my views.

I'll be happy to respond to your questions.

Mr. CONDIT. Mr. Castillo, thank you very much for your opening statement. It was excellent. I do apologize. I'm going to have to adjourn here for 10 minutes so that I can go cast a vote. I would appreciate it if no one would leave. We'll be back, and I'll try to bring some members back with me.

We'll recess for 10 minutes and then we'll be right back.

[Recess taken.]

Mr. CONDIT. We would like to reconvene the hearing. I thank the witnesses for bearing with us. This may happen occasionally for the next hour or so, so we apologize for that.

Mr. McNary, do you want to proceed with your opening statement, sir?

**STATEMENT OF GENE McNARY, FORMER COMMISSIONER,
IMMIGRATION AND NATURALIZATION SERVICE**

Mr. McNARY. Mr. Chairman and members of the committee, first of all, I appreciate the opportunity and invitation to be here. It's my first chance to testify without being edited or advised. So if I say some things that seem to be independent, then I've intended it to be that way.

Mr. CONDIT. Very good.

Mr. McNARY. I hope you'll bear with me. First of all, the last panel, as far as I'm concerned—and you can go through and peruse their testimony—I thought that it was a very weak panel. If you really are interested in doing something about INS, then you need to talk to some people who know about INS.

Let me run through real quickly, because I can't rebut all these things that were said. But first of all, GAO made a study before I became Commissioner, before, in 1989; and they are still referring to the same study 4 years later.

They then released that study 7 months after I was in office. Half of what they recommended had already been corrected at that time. Since then, I believe that we've addressed every point that they raised in that study.

It was a good study. I don't want to disparage the study, but it's not timely. What you heard was completely outdated testimony.

The IG talked about infrastructure. He generalized from anecdotal evidence. He doesn't apparently know that we've gone to TQM, that we've improved communication, that we've got claims, IBIS, INS Pass. We've got so many things that amount to infrastructure, plus training that has gone on in the last 4 years.

We just went through the 1990 Immigration Act, which required us to run all of our people back through training, update, a new reform law. Yet, the IG seems to be totally out of touch. He came to Congress to ask—he didn't come to Congress; he talked to some Congressmen in a committee—to ask for the right to audit our Examinations fee account. I guess he needed something to do.

We've already got GAO auditing. We've already hired new people who are experts in that field. Yet he got \$5 million out of the Examinations fee account to audit the Examinations fee account.

He talks about an inferiority complex. INS people love it. They love it. There's no inferiority complex. There's expertise over there that's outstanding, and I intend to address why that expertise doesn't come out.

He wants to do something about overtime management, and INS should eliminate the 1931 Overtime Act. INS doesn't even come to Congress. It goes to Justice, and Justice goes to OMB who comes to Congress. The IG left me cold.

Ms. Yañez, I think it's obvious, is an immigration lawyer. She's not much for enforcement. She's for service and benefits. I don't know that I have to go into much of her testimony. She wants legal residence for everyone. She opposes summary exclusions. She opposes preinspection at foreign airports. Asylum, even though it involves fraudulent documents, doesn't involve law enforcement.

There is a body of thought that permeates this country and, again, it comes from some well-intentioned people, but they don't see the entire problem and process of immigration. They have a very limited vision and a tunnel vision at that.

The last one was Mr. Wortman, and I like Mr. Wortman. The chairman of that committee was Norman Carlson. Carlson came from BOP. Anybody could run BOP. That's a piece of cake. They did a study, and I don't want to go into it, because there was one thing that was critical about the study. They recommended retaining the regions.

They wanted to retain the regions, which Mr. Wray had said, 4 years ago, and people told me before I came in, this is where the autonomous recommendations came from; this is where the lack of coordination came from.

We had four different INS's, and it wasn't difficult for me to see, when I came in, that we needed a central headquarters, and we needed to do away with commissioners, regional commissioners, and bring this agency together under one central head, and we did that. Yet the Carlson report, in all their wisdom, came out with this idea that the regions should be retained. Meaningless.

Let me say to you that suddenly immigration is hot news. We have widespread employment of illegal aliens as nannies. It makes it difficult to appoint to office one who has not winked at our immigration laws. We have acts of terrorism at the CIA entrance in Langley and New York's World Trade Center, which bring alarm to Americans, who demand to know how illegal aliens were allowed to enter and stay in this country.

If these events awaken our country to the problems of immigration policy and the importance of immigration policy and law, and the crucial nature of the Immigration and Naturalization Service, then they may be blessings in disguise. That may be what prompted you and has stirred this subcommittee to take a good look, because I believe that it's a serious matter.

For starters, Americans are enthusiastic about change around the world. We appreciate, we've even engineered worldwide advancements in communications, transportation, and information dissemination. We applaud the spread of democracy and free markets across the globe.

We are excited about our own improved standard of living, but we must also recognize the fact that these developments are the catalysts for our shrinking world. As the peoples of other less-developed nations are better informed and able to travel, they increasingly pursue, in greater numbers, the opportunities that the United States of America alone provides.

Now, a historical perspective. Our Nation, more than any other, has been generous in admitting immigrants to our shores. We are a "nation of immigrants."

After a decade of discussion and anguish in Congress, the 1990 Immigration Act increased legal immigration to 700,000 annually, and they did this with specific designations designed to serve the national interest. At the same time, we have been humanitarian in accepting up to 130,000 refugees and 80,000 asylum applications annually.

I agree with the 1990 Immigration Act. I agree with legal immigration, and I agree with the provisions. I think we can even do more. If I had my way, I think we can absorb 1 million people a year into this country, legally. But these laws are meaningless. They're meaningless.

They're meaningless because we have 3,000 people illegally crossing the border daily between Tijuana and San Diego. One million apprehensions occur each year along the southwestern border; and that's merely half of those who attempt illegal entry.

Dominicans overwhelm Puerto Rico and have very little trouble flying on into New York. Chinese are now coming by boat in greater numbers and, once within our waters, they claim asylum.

Temporary visitors, students, and others who overstay their visas are seldom detected. Departure control—I doubt that anybody knows what that is. It's nonexistent. But it is the way that we can determine whether somebody overstayed and how many people, when we need to know, are in this country, and where they are.

The Immigration Reform and Control Act of 1986 provided for the legalization of 3 million persons living illegally in the shadows in the United States. The compromise reached was that once and for all, we would bring illegal immigration under control by penalizing employers who hire and often abuse illegal aliens, thereby eliminating the incentive to enter illegally and, concomitantly, to beef up the Border Patrol and "stop them at the border." You've heard that cry.

As is often the case, however, what sounded good on the political stump did not materialize. The Border Patrol, while authorized additional personnel, was never funded and employer sanctions, while useful, were not as effective as intended because of the lack of an employment authorization document that's counterfeitproof, which is necessary to make the law enforceable.

Now, one might opine, as the Wall Street Journal does, that IRCA was unnecessary and that the United States should have open borders. I think Ms. Yañez would support that position. However, if the Wall Street Journal were housed in the World Trade Center, it would certainly be confronted with a new perspective.

The impact of illegal immigration. Let us briefly consider the effects of illegal immigration on our society.

First, those who enter illegally tend to concentrate in certain locales—those of you from California are well aware of this—and overload the community services. Hospitals, housing, schools, and welfare rolls in Florida, California, and Texas are overwhelmed.

Second, while illegal aliens who find jobs may boost our economy, they compete with those who are eligible to work. This condition

not only increases unemployment, but raises doubts about the accuracy of our unemployment figures themselves.

So it is with poverty level figures. Who do we count as living below the poverty line? When you consider a person who entered the country illegally, you can be sure that he or she has a higher income and is better off than if the individual had remained in their homeland.

Perhaps the most serious adverse effect is the overload on our legal system and the breakdown of respect for our laws. Those entering the United States illegally have no legitimate sponsors and are prohibited from holding jobs. Thus, criminal conduct may be the only way to survive. Moreover, the individual may be bound by an indentured servitude commitment to a criminal organization in exchange for being smuggled into this country.

Billions—billions—in law enforcement budgets can be attributed to alien crime. Court dockets carry a high percentage of aliens, especially in California, Florida, New York, Texas, and Illinois. Twenty-five percent of the Federal prison system and a significant portion of the State prison populations consist of illegal aliens.

What about the inhumane conditions that are not readily visible? My guess is that several million persons live in the shadows in this country. They live in constant fear of being detected and deported. They work at the mercy of often unscrupulous employers. They are deprived of the protection of our laws—afraid to report crimes that are routinely committed against them. This subculture will continue to expand, as will the attendant inhumanity and crime.

Are Americans aware of the adverse effects of illegal immigration? The answer is a qualified yes. Yes, but it's not a front-burner item. According to the surveys, in excess of 90 percent of all citizens and permanent residents are opposed to illegal immigration. However, 90 percent of the media coverage concerns anecdotes about harmless persons being deported by INS.

This negligible media coverage leaves the INS in a defensive posture—explaining the enforcement of the law or responding to charges and allegations made by well-organized and well-financed immigration rights groups. Such reporting has led to a public perception—a public perception—that the U.S.'s immigration laws, while necessary, need not be enforced. Moreover, popular opinion holds that any enforcement of the immigration laws is unnecessarily harsh unless the lawbreaker is a criminal.

However, what we fail to acknowledge is that the violation of the immigration laws not only makes the criminal act possible, but frequently causes it. As a society, we know we are a Nation of immigrants. However, we must temper our humanitarian impulses with good judgment and adhere to an orderly process for the admission of immigrants into this country.

At the present time, both good judgment and the orderly process are lacking. This is borne out by widespread hiring of illegal aliens as nannies and other domestic servants; routine appointment of day laborers who congregate on street corners and parking lots; widespread acceptance of the use of public services by those here illegally; and laws in cities such as New York and San Francisco which actually prohibit public employees from notifying the INS of

immigration violations, unless a crime has been committed by the alien.

The disdain for the U.S.'s immigration laws reinforces the notion that the INS should be separated from other law enforcement agencies and that immigration laws need not be enforced. Indeed, it is illegal—illegal—for a public employee to even report a violation of the immigration laws, in some cities.

Now, is this dilemma incapable of solution? Are we Americans victims of our own big hearts and without the resolve to face a future of increasing numbers from around the world who come to America to live here illegally?

I believe the solution lies in the removal of the Immigration and Naturalization Service from the Justice Department. I can say that now, for the first time.

During my term as commissioner of INS, we succeeded in bringing about a reorganization, instituted a career development program, and initiated total quality management, all of which were and are crucial to the efficient and effective operation of the INS.

Interestingly enough, not one of the panel members—IG or GAO—could think of total quality management or reorganization or any of the things that have taken place. While these improvements were necessary, it should be noted that it took over 1 year—I fought this battle—it took over 1 year to gain approval from the Department of Justice.

Although INS has a major role to play in the national interest, it has never had a major voice in the Department of Justice. Most attorneys general not only don't know anything about immigration, they don't have the slightest interest.

The Department of Justice is an investigative and prosecutorial agency—and it is a good one. It is concerned with finding and bringing the "bad guys" to justice.

INS doesn't fit the DOJ mold. Immigration has complicated laws and procedures, with violations in varying degrees of gray. Plus, INS has an important and unique service function. It is not easy at INS. I've told some of the people who came from FBI and DEA to INS that "We're not just a bunch of gumshoes over here, you got to have some brains." And I think, after a while, they started to agree with me.

While the INS work force approximates the size of the FBI, the Bureau has 150 SES positions to INS's 35. If INS is good for anything to the Department of Justice, it is in serving as a resource for shifting INS funds to other components of the Department, like \$5 million to the IG, or in offering employment to nonproductive personnel exiled from other divisions of the Department.

INS is the immigration agency. Twenty years ago organized crime was primarily Mafia-controlled. Today, virtually every nationality with a presence in this country has their own syndicate—Jamaicans, Dominicans, Japanese, Chinese, and others. Much of the organized crime is drug related.

To coordinate law enforcement agency activities, the Organized Crime Drug Enforcement Task Force—OCDEF—was formed. Out of a budget of \$400 million, a mere \$14 million, or 3.5 percent, was allocated to INS, with the balance distributed between the FBI and DEA, most of the balance.

Logically, INS should play a major role in this effort, as, after all, these groups are predominantly alien organizations. Yet, FBI and DEA command the resources, irrespective of the role and function of the various Justice components.

Let me say this, that much has been made of the fact that our budget went from \$1 billion in the last 4 years to \$1.5 billion. That increase is really not in appropriations. That increase is in fees which are supposed to go back into providing the service—examinations and inspections.

While INS has tremendous expertise in immigration matters, as one would expect, legislation has been proposed and passed with very little input from INS, except by way of technical assistance provided to Members of Congress who were wise enough to tap this expertise.

The executive branch has provided very little leadership in immigration policy and law, not because it didn't want to, but because the INS has been the stepchild in the Department of Justice and the positions and proposals of INS have been filtered and then submitted, if at all, by unknowledgeable DOJ officials.

All of this clearly demonstrates the point that the agency charged with the responsibility for immigration policy has been subordinated to a department with an incongruous mission.

Additionally, consider these examples of measures submitted by INS over the years, that were suppressed or delayed by DOJ: These three relate to asylum regulations, took me over 1 year, vitally important; law enforcement regulations, which I've had over there for 1 year and when I left on January 20, were still there, major law enforcement regulations covering general arrest authority, use of firearms and high-speed pursuits; and summary exclusion legislation, which was advocated by my predecessor and might have been advocated by Commissioner Castillo for a long time; and just now, in 1992, it's gone from Justice to the Hill in legislation form. Vitally important.

Those are matters that are obvious. I'm sure that panel after panel will come in and say, "Oh, yes, this has been delayed and that's been delayed, and nothing has happened and it's bad management." We tried. I banged on the table over and over to move this stuff. I've only got a little bit more.

Let me point out that, in striking contrast to the INS, the U.S. Customs Service has flourished and expanded its border involvement by friendly Treasury committees of the Congress, despite the fact that today's goods come into the country through brokers to warehouses, rather than at ports of entry, by and large.

I am told the reason for Customs' expansion is, in large part, due to the perception by Congress that INS isn't supported by the Department of Justice and that, if the job of border inspections is to be done, then Customs must usurp INS's traditional function.

Customs doesn't belong at the port of entry. The goods can be inspected someplace else. Yet, they've got 2,000 inspectors and we've got 1,000. It makes no sense at all. The only reason it happens that way is that we're in Justice and they're in Treasury.

Mandatory analysis of immigration impact of government action is necessary. Since INS is buried at DOJ, the immigration con-

sequences of the acts of other departments and agencies in the Federal Government is seldom considered.

Did anyone consider the immigration impact with the administration, at the recommendation of the State Department, put an embargo into effect in Haiti? Certainly INS was not consulted.

Were immigration ramifications taken into account in the free trade talk? I had to finagle a way to monitor NAFTA discussions. And, if immigration was deliberately not an issue for discussion in the context of NAFTA, shouldn't that decision include INS input?

If tariffs go up to protect American sugar interests, does anyone or any agency consider the immigration impact of sugar cane workers in the Dominican Republic losing their jobs? Furthermore, are these even the kinds of issues the lawyers at the Department of Justice would be interested in bringing to the table?

It is vitally important to this Nation that immigration be elevated, if not to the spotlight, then at least to a position of awareness. Unless we are aware of and deal with the immigration consequences of government action, then bombings, shootings, overloaded jails and dockets, overwhelmed communities, and the intolerable inhumane subculture which continues to grow are only the beginning of our problems.

The administration needs to tap the expertise at INS on policy and law. The public needs to be aware of the relevant issues. Moreover, there needs to be a recognition that virtually every act of government has immigration consequences. The following is only a partial list of areas touched by immigration: Trade and commerce, civil rights, education, health, agriculture, labor, foreign policy, race relations, and census.

Let me conclude by saying that, for these reasons, I recommend that INS be placed in focus and report directly to the President, either at the Cabinet level or as an independent agency, such as EPA. In addition, I recommend that an "Immigration Impact Study" be a prerequisite and an important part of every major government decision, similar to an "Environmental Impact Statement." Through a mandatory "Immigration Impact Study," the true impacts of government action can be identified and evaluated.

The President and this Nation must look to the 21st century. The future will be marked with an increasing number of challenges with immigration overtones. It is imperative that the President have a first-rate immigration agency accessible to him and his advisors, and the expertise to submit the very best strategic plans, sound policy, and prompt and solid decisionmaking.

The INS is capable of all of the above, but it must be brought out of the shadows, recognized for its importance, and called upon to serve the President and this great Nation.

There are some people you need here. Chris Sale, Gil Kleinknecht, Jim Puleo, John Cummings, Paul Virtue, and John Chase. These are solid, knowledgeable experts on immigration. I spent 4 years there, and I'm not an expert and, let me tell you, those guys who preceded me and many who will follow me know a lot less than I know.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McNary follows:]

TESTIMONY OF GENE McNARY
FORMER COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE
before the
CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
INFORMATION, JUSTICE, TRANSPORTATION, AND AGRICULTURE
SUBCOMMITTEE
of the
COMMITTEE ON GOVERNMENT OPERATIONS

March 30, 1993

Mr. Chairman and Members of the Committee:

Introduction

Suddenly the subject of immigration dominates the news. Widespread employment of illegal aliens as nannies makes it difficult to appoint to office one who has not winked at our immigration laws. Acts of terrorism at the CIA entrance in Langley, Virginia and New York's World Trade Center bring alarm to Americans who demand to know how illegal aliens were allowed to enter and stay in this country.

If these events serve to awaken our country and its government to the importance of immigration policy and law, and the crucial nature of the Immigration and Naturalization Service in establishing that policy and enforcing those laws, then these recent shocking incidents may be blessings in disguise.

For starters, we Americans are enthusiastic about change around the world. We appreciate and have engineered worldwide advancements in communication, transportation, and information dissemination. We applaud the spread of democracy and free markets across the globe. We are excited about our own improved standard of living, but we must also recognize the fact that these developments are the catalyst for our shrinking world. As the peoples of other less developed nations are better informed and able to travel, they increasingly pursue in greater numbers the opportunities that the United States of America alone provides.

Historical Perspective

Our nation, more than any other, has been generous in admitting immigrants to our shores. We are a "nation of immigrants." After a decade of discussion and anguish in the Congress, the 1990 Immigration Act increased legal immigration to 700,000 annually, with specific designations designed to serve the national interest. At the same time we have been humanitarian in accepting up to 130,000 refugees and 80,000 asylum applications annually.

While I agree with the provisions of the 1990 Immigration Act, I believe that we can do even more. What I hope to convey here today, however, is that these laws are meaningless.

- We have 3,000 persons illegally crossing the border daily between Tijuana and San Diego. One million apprehensions occur each year along the Southwestern border -- and this is merely half of those who attempt illegal entry.
- Dominicans overwhelm Puerto Rico and have very little trouble flying on into New York.
- Chinese are now coming by boat in greater numbers, and once within our waters claim asylum.
- Temporary visitors, students, and others who overstay their

visas are seldom detected. Departure control is nonexistent.

- Proliferation of fraudulent documents has made it easy to board a plane, claim asylum upon entry into the United States, and abuse our laws and procedures because of overloaded detention facilities and court dockets.

The Immigration Reform and Control Act of 1986 provided for the legalization of 3,000,000 persons living illegally in the shadows in the United States. The compromise reached was that once and for all we would bring illegal immigration under control by penalizing employers who hire and often abuse illegal aliens, thereby eliminating the incentive to enter illegally and concomitantly to beef up the Border Patrol and "stop them at the border."

As is often the case, however, what sounded good on the political stump did not materialize -- the Border Patrol, while authorized additional personnel, was never funded and employer sanctions, while useful, were not as effective as intended because of the lack of an employment authorization document which is necessary to make the law enforceable.

Now one might opine, as the Wall Street Journal does, that IRCA was unnecessary and that the United States should have open borders. However, if the Wall Street Journal were housed in the World Trade Center, it would certainly be confronted with a new perspective.

Impact of Illegal Immigration

Let us briefly consider the effects of illegal immigration on our society. First, those who enter illegally tend to concentrate in certain locales and overload community services. Hospitals, housing, schools, and welfare rolls in Florida, California, and Texas are overwhelmed. Secondly, while illegal aliens who find jobs may boost our economy, they compete with those who are eligible to work. This condition not only increases unemployment, but raises doubts about the accuracy of our unemployment figures. So it is with poverty level figures -- who do we count as living below the poverty line? When you consider a person who entered the country illegally, you can be sure that he or she has higher income and is better off than if the individual had remained in their homeland.

Perhaps the most serious adverse effect is the overload on our legal system and the breakdown of respect for our laws. Those entering the United States illegally have no legitimate sponsors and are prohibited from holding jobs. Thus, criminal conduct may be the only way to survive. Moreover, the individual may be bound by an indentured servitude commitment to a criminal organization in exchange for being smuggled into the country.

Billions in law enforcement budgets can be attributed to alien crime. Court dockets carry a high percentage of aliens, especially in California, Florida, New York, Texas, and Illinois. Twenty-five percent of the Federal Prison system and a significant portion of

State prison populations consist of illegal aliens.

And, what about the inhumane conditions that are not readily visible? My guess is that several million persons live in the shadows in this country. They live in constant fear of being detected and deported. They work at the mercy of often unscrupulous employers, they are deprived of the protection of our laws -- afraid to report the crimes that are routinely committed against them. This sub-culture will continue to expand, as will the attendant inhumanity and crime.

Are Americans aware of the adverse effects of illegal immigration? The answer is a qualified yes -- yes, but this is not a front burner issue for most Americans. According to the surveys, in excess of 90% of all citizens and permanent residents are opposed to illegal immigration. However, 90% of the media coverage concerns anecdotes about harmless persons being deported by the INS.

This negative media coverage leaves the INS in a defensive posture -- explaining the enforcement of the law or responding to charges and allegations made by well-organized and well-financed immigration rights groups. Such reporting has led to a public perception that the United States immigration laws, while necessary, need not be enforced. Moreover, popular opinion holds that any enforcement of the immigration laws is unnecessarily harsh unless the lawbreaker is a criminal.

However, what we fail to acknowledge is that the violation of immigration laws not only makes the criminal act possible, but

frequently causes it. As a society, we know we are a nation of immigrants. However, we must temper our humanitarian impulses with good judgment and adhere to an orderly process for the admission of immigrants into this country.

At the present time, both good judgment and orderly process are lacking. This is borne out by:

- widespread hiring of illegal aliens as nannies and other domestic servants;
- routine employment of day laborers who congregate on street corners and parking lots;
- widespread acceptance of the use of public services by those here illegally; and
- laws in cities such as New York and San Francisco, which prohibit public employees from notifying the INS of immigration violations, unless a crime has been committed by the alien.

This disdain for the United States' immigration laws reinforces the notion that the INS should be separated from other law enforcement agencies and that immigration laws need not be enforced. Indeed, it is illegal for a public employee to even report a violation of the immigration laws in some cities.

Recommendations

Is this dilemma incapable of solution? Are we Americans victims of our own big hearts, and without the resolve to face a future of increasing numbers from around the world who come to America and live here illegally?

1) Remove the INS from the Department of Justice

I believe the solution lies in the removal of the Immigration and Naturalization Service from the Justice Department. During my term as Commissioner of INS, we succeeded in bringing about a reorganization, instituted a career development program, and initiated Total Quality Management, all of which were and are crucial to the efficient and effective operation of the INS. While these improvements were necessary, it should be noted that it took over a year to gain approval from the Department of Justice.

Although INS has a major role to play in the national interest, it has never had a major voice in the Department of Justice. Most Attorneys General not only don't know anything about immigration, they don't have the slightest interest.

The Department of Justice is an investigative and prosecutorial agency. It is concerned with finding and bringing the "bad guys" to justice. INS doesn't fit the DOJ mold. Immigration has complicated laws and procedures, with violations in

varying degrees of gray. Plus, INS has an important and unique service function.

While the INS work force approximates the size of the FBI, the Bureau has 150 SES positions to INS's 35. If INS is good for anything to the Department of Justice, it is in serving as a resource for shifting INS funds to other components of the Department or in offering employment to non-productive personnel exiled from other divisions of the Department.

INS is the immigration agency. Twenty years ago organized crime was primarily Mafia-controlled. Today, virtually every nationality with a presence in this country has its own syndicate - Jamaicans, Dominicans, Japanese, Chinese, and others. Much of the organized crime is drug-related.

To coordinate law enforcement agency activities the Organized Crime Drug Enforcement Task Force was formed. Out of a budget of \$400,000,000., a mere \$14,000,000., or 3 1/2%, was allocated to INS, with most of the balance distributed between the FBI and DEA.

Logically, INS should play a major role in this effort, as after all, these groups are predominantly alien organizations. Yet, FBI and DEA command the resources irrespective of the role and function of the various Justice components.

While INS has tremendous expertise in immigration matters as one would expect, legislation has been proposed and passed with very little input from INS, except by way of technical assistance provided to members of Congress who were wise enough to tap this expertise. The Executive Branch has provided very little

leadership in immigration policy and law, not because it didn't want to, but because the INS has been a step-child in the Department of Justice and the positions and proposals of INS have been filtered and then submitted (if at all) by unknowledgeable DOJ officials.

All of this clearly demonstrates the point that the agency charged with responsibility for immigration policy has been subordinated to a department with an incongruous mission.

Additionally, consider these examples of measures submitted by INS over the years that were suppressed or delayed by DOJ:

A. Asylum Regulations

Upon my appointment as Commissioner, I was committed to the passage of asylum regulations which had languished at DOJ for a decade following the enactment of the Refugee Act in 1980. It took over a year of constant urging for the approval of the asylum regulations which established a corps of trained asylum adjudicators and procedures for a fair asylum hearing. However, streamlined procedures for expediting asylum adjudication still have not been added to the regulations.

B. Law Enforcement Regulations

In September of 1991, a major comprehensive regulation covering general arrest authority, use of firearms, and high-speed

pursuits for INS were submitted to DOJ. Provisions addressing high-speed pursuit were deleted in DOJ's review process until four persons were killed in a highly-publicized chase in Temecula, California. This tragic incident prompted the restoration of the high-speed provisions to the regulatory package. As of January 20, 1993 when I left INS, these modern law enforcement regulations still had not cleared DOJ.

C. Summary Exclusion Legislation

The answer to preventing illegal entry at our airports lies in the enactment of summary exclusion provisions. Persons arrive at International Airports with fraudulent documents or no documents at all, then they claim asylum. Detention serves as a deterrent, but when detention facilities and court dockets are overloaded, these persons are released into our communities, never to be seen again. Summary exclusion would provide for an immediate adjudication at the airport by trained adjudicators and the immediate return of those who fail to make a credible claim for asylum.

The proposed legislation would include provisions to guarantee due process. By returning expeditiously those who enter the United States by way of London, Paris, Frankfurt, or Rome, where they were not subject to persecution and could have claimed asylum in that country, and those whose country of origin does not engage in persecution as defined by international law, the pressure would be eliminated -- detention facilities would be adequate, and

prevention of illegal entry made possible. In addition, many of those making a credible claim would not require detention pending hearing.

While summary exclusion provisions were long advocated to the Department of Justice by INS, first by my predecessor and then by me, it wasn't until 1992 that legislation was finally submitted to the Congress which would give INS and indeed this country a means of bringing the problem under control.

In striking contrast to the INS, the U.S. Customs Service has flourished and expanded its border involvement by friendly Treasury Committees of the Congress despite the fact that today's goods come into the country through brokers to warehouses rather than at Ports of Entry. I am told that the reason for Custom's expansion is in large part due to the perception by Congress that INS isn't supported by the Department of Justice and that if the job of Border inspections is to be done, then Customs must usurp INS's traditional function.

2) Mandatory Analysis of Immigration Impact of Government Action

Since INS is buried at DOJ, the immigration consequences of the acts of other Departments and agencies in the Federal Government is seldom considered.

Did anyone consider the immigration impact when the Administration, at the recommendation of the State Department, put an embargo into effect in Haiti? Certainly INS was not consulted.

Were immigration ramifications taken into account in the free trade talks? I had to finagle a way to monitor NAFTA discussions. And, if immigration was deliberately not an issue for discussion in the context of NAFTA, shouldn't that decision include INS input?

If tariffs go up to protect American sugar interests, does anyone or any agency consider the immigration impact of sugar cane workers in the Dominican Republic losing their jobs? Furthermore, are these even the kinds of issues the lawyers at the Department of Justice would be interested in bringing to the table?

It is vitally important to this nation that immigration be elevated, if not to the spotlight, then at least to a position of awareness. Unless we are aware of and deal with the immigration consequences of government action, then bombings, shootings, overloaded jails and dockets, overwhelmed communities, and the intolerable inhumane sub-culture which continues to grow are only the beginning of our problems.

The administration needs to tap the expertise at INS on policy and law. The public needs to be aware of the relevant issues. Moreover, there needs to be a recognition that virtually every act of government has immigration consequences. The following is only a partial list of area touched by immigration: trade and commerce, civil rights, education, health, agriculture, labor, foreign policy, race relations, and census.

Conclusion

For these reasons, I recommend that INS be placed in focus and report directly to the President either at the Cabinet level or as an independent agency, such as EPA. In addition, I recommend that an "Immigration Impact Study" be a prerequisite and an important part of every major Government decision -- similar to Environmental Impact Statements. Through a mandatory Immigration Impact Study, the true impacts of Government action can be identified and evaluated.

The President and this Nation must look to the Twenty-First Century. The future will be marked with an increasing number of challenges with immigration overtones. It is imperative that the President have a first-rate immigration agency accessible to him and his advisers, and the expertise to submit the very best strategic plans, sound policy and prompt and solid decision-making.

The INS is capable of all of the above but it must be brought out of the shadows, recognized for its importance, and called upon to serve the President and this great Nation.

Mr. CONDIT. Thank you, Mr. McNary. I will assure you those people that you mentioned will get their opportunity. We are going to have a series of hearings, and will be better informed on INS and how it conducts itself. I do appreciate your testimony.

Mr. Castillo, do you have any comments regarding Mr. McNary's testimony?

Mr. CASTILLO. I'm sort of stunned at the relationship that he's been describing between INS and the executive. I thought they were somewhat closer. I have no reason to disagree with him.

Mr. McNARY. There's a big difference between his INS and my INS.

Mr. CASTILLO. I do want to add one thing. I believe that the odds are good that Ms. Reno would be more sensitive to immigration issues.

Mr. CONDIT. It was mentioned that the subcommittee's interest in the INS issue may be prompted by recent events. That certainly has highlighted the interest, but of those of us sitting on this subcommittee today, some of us represent States where the INS policy or the lack of policy profoundly impacts our States, which leads me to a question I think is really important to States, counties, and cities, and I'd like a response from both of you.

Do you believe that the Federal Government has responsibility for funding costs incurred by States and countries and cities for legal and illegal immigration?

Mr. CASTILLO. Since I left the position as commissioner, I've been able to visit other countries to see how they handle this issue of services and expenses incurred as a result of some action or accident by an alien, by a noncitizen. It's fascinating that, in some parts of the world, there are social trust funds where visitors to this country pay a small amount and that, then, goes into a huge federally financed fund which is then held for major medical care, for example, along the border.

You can't expect the county hospital system of Brownsville, TX to pay \$800,000 because some people visiting here were in a major car accident. The county hospital of Brownsville barely makes its own expenses.

If there were a major national social trust fund, then you could take care of some of the medical expenses that people will incur, and they will incur it in greater numbers simply because more will be coming as a result of NAFTA and other activities we're taking now.

I believe there should be serious consideration of a national trust fund. I don't think you can ask the county hospitals of Laredo and San Diego and all those other places to handle these expenses. It's just not practical.

Mr. CONDIT. How about prisons?

Mr. CASTILLO. Similarly, some expenses that could be directly allocated, you'd have this fund to be used for purposes—I'm sure there would be a range of activities—that have to do with social, medical, probably penal, and so on, that could be fit in there.

Mr. CONDIT. Mr. McNary.

Mr. McNARY. I don't think you're going to like my answer. I would be in favor of resources. I think it is a Federal problem, but I think that it needs to be accompanied with some State law

changes. California invites people in, in my opinion. California provides education, housing, welfare. They have the sanctuaries that are locked in by ordinance in San Francisco and other cities. There's a milieu of acceptance of illegal entry into California. So it is with Florida and some other States.

If there were changes, and the ordinances, to begin with, were eliminated, and there was a greater awareness and State input into trying to bring immigration under control, then I would favor funding some of the immigration—then we're talking about legal immigration—that will unevenly fall on certain States.

Mr. CONDIT. You make a good point. But the counties and cities Mr. Castillo talked about are now paying those medical costs. California is now paying, I think, for 40,000 felons who are illegal. We're paying the cost with no reimbursement. It is a hardship on States and counties to do that.

Mr. McNary, you've been extremely candid, and I appreciate that very, very much. It's really not important whether I agree with your answers or not. You made a statement about the Justice Department—you were pretty critical of the Justice Department—about moving functions of INS out of the Justice Department.

What if that doesn't occur? How can we resolve those issues?

Mr. McNARY. Mr. Chairman, I don't believe that it can be resolved. I think that it's a structural flaw. I don't believe it can be corrected. Justice has a different mission. Immigration is a specialty. It is absolutely complex, detailed. If you attended an immigration board meeting, a lot of it is by the numbers—I-151 and I-94—and, you know, it's just very complex.

I don't think anybody at Justice ever understood it, didn't want to take time. It doesn't involve major criminal prosecutions, major investigations. And I believe that, as long as INS is a part of Justice, that it will never be in focus; it will never have the importance that it must have.

Otherwise, why—I've asked the question in my testimony—why isn't INS ever consulted? The only answer is that it's hidden in the Department of Justice. Justice is not the conduit through to the Cabinet that it has to be.

As long as it's a part of Justice, I don't believe—and I have a high regard for Janet Reno, and she's already been over to INS and she was well-received—I don't believe it's within her capacity to really bring INS out of the shadows. I think Defense, State, Agriculture, Labor, all the others will usurp the INS function.

Mr. CONDIT. I have some additional questions for Mr. Castillo, and I'm going to defer those just for a moment. I'm going to yield to Mr. Thomas, so that we all at least get one round before we have to go vote again. Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman. I'll be fairly brief. I appreciated your candor.

Mr. Castillo, how do you build a fund from illegal aliens?

Mr. CASTILLO. No, you don't build a fund from them. The idea was to build a fund from all travelers to this country, from immigrants to this country. We're building half a billion a year right now from aliens or from immigrants. Visitors to this country would pay a fee.

Mr. THOMAS. Just for illegal aliens?

Mr. CASTILLO. It could be a group of legal visitors who come to this country and have an accident in San Diego County.

Mr. THOMAS. Don't we require that they have insurance and things like that? When you go other places, they do.

Mr. CASTILLO. Not to my knowledge, sir.

Mr. THOMAS. I see.

Mr. CASTILLO. Legal visitors would pay. I don't think we'd go in the ravines and collect from the others.

Mr. THOMAS. I wouldn't imagine we would do that very easily.

Mr. CASTILLO. I think we could collect from the legal visitors. A very small amount of money would add up.

Mr. THOMAS. I understand how that deals with the chairman, but it doesn't seem to me it deals with the real issue, which is the illegal immigrant.

Despite your discussion, Mr. McNary, about the structural problems—and I don't doubt that they're so—how do you justify 3,000 people crossing the border illegally, and the list you have here, when you do have an agency, a reasonably well-funded agency? Wouldn't you have thought that we could do a little better than that?

Mr. McNARY. We're not well-funded on the enforcement side. As I mentioned, there were supposed to be an additional 2,000 border patrolmen that came with IRCA. That was a three-legged stool. We got the 3 million illegal aliens out of the shadows and they were legalized, and we got employer sanctions, though with shortcomings. We didn't ever get the Border Patrol, the 2,000. We have 4,000, and that's the way it's been.

As a matter of fact, the investigators have shrunk because salaries have gone up and we took it out of our hide. So those people that are really addressing enforcement have not increased.

Mr. THOMAS. Your resources have gone up substantially, regardless of where they came from; isn't that true?

Mr. McNARY. But the user fees are collected from airports, travelers—air travelers—and collected from those who are applying through Examinations for green cards, for work permits, and that's where the \$500 million came from.

Now, there's a big fight. Mr. Hankinson says that more of that fee money should be used to cover administrative expenses. Yet, you'll hear from Warren Leiden, who represents AILA, and he doesn't agree with increasing fees on those immigrants in order to pay for the Border Patrol or for investigators.

Mr. THOMAS. Would you agree with the notion or the allegation that the funds are, No. 1, not collected, some may disappear, they're certainly not accounted for?

Mr. McNARY. No, sir.

Mr. THOMAS. You think it's all accounted for?

Mr. McNARY. Yes, sir.

Mr. THOMAS. Where do they get those kinds of ideas?

Mr. McNARY. As I mentioned, Mr. Wray's study—and I think maybe you asked him whether this was current, and it's not. I think if you listen to some of his answers, most of his answers were, "Well, we haven't taken a look at that; we'd have to go back and do it." That was old stuff.

Mr. THOMAS. The accounting and the financial accountability has improved, in your view, then, in the last—since these studies?

Mr. McNARY. Yes, sir. I wouldn't say that it is the best in the Federal Government.

Mr. THOMAS. Yes.

Mr. McNARY. But it is drastically—

Mr. THOMAS. This is, I guess, a tough one, but I—and you mention here that “widespread acceptance of the use of public services by illegal persons”—isn't that something that we ought to change? I guess I don't understand that, where we spend billions of dollars, I suppose, providing services for illegal people.

Mr. McNARY. Yes.

Mr. THOMAS. Isn't that a way to at least identify illegal folks?

Mr. McNARY. It seems to me that way. And my point is that we have never taken the immigration laws seriously—

Mr. THOMAS. I see.

Mr. McNARY [continuing]. We as a people. We don't take them seriously. Everybody has a nanny. Everybody has a friend who wants to come into the country. And, oh, no, as a society, we can't bring everybody in, “but just my friend.”

Mr. THOMAS. Well, let me suggest to you that not everybody in Wyoming has a nanny—that there is a changing feeling about that. And one of the changes, I think, is the cost.

We mentioned earlier the HIV thing. I think a lot of people are very concerned about the costs of those kinds of problems. Do you sense a public feeling and change about that, the more interest in doing something, rather than not caring?

Mr. McNARY. Well, I think there is more interest as a result of some of the recent events.

Mr. THOMAS. Yes.

Mr. McNARY. But the—well, I don't—you know, the cost—the cost is a problem, not because of the amounts, but because it falls unevenly.

You know, I would not sit here and tell you that immigrants are a drain. Some studies will even say that the—and I don't know that I agree with it, but they will say that even illegal immigrants boost our economy. But that is not relevant.

What is relevant is that they fall unevenly. They come into—you know, in Miami they were building a new school every 6 weeks. They come into certain areas, and—your point about California—they overwhelm certain areas. And so, you know, the cost, if they were spread out—and that is a part of any orderly process. That is a part of coming in legally, so that they have sponsors. And we can absorb, as I say, up to 1 million.

Mr. THOMAS. Mr. Castillo wanted to—

Mr. CASTILLO. Mr. Thomas, I want to make a point about how we deploy our resources. There are certain major entry points along the border for both legal and illegal entry. We know what they are, and we know where they are, and we know how many numbers come.

It seems to me we could benefit if we used some of the approach used by Mexico, where they have very quick, almost nonexistent, inspections for that flow of 2 or 3 million people that cross daily

and use their resources a little further in, in Mexico at the, I think, 15-kilometer point.

And we could do the same and then generate some economic development along our own border and use our resources, rather than have all these inspectors try to—at one place, stopping cars. They are going to go to Laredo to shop and come right back home. Use our resources between those points and at the points where we want to stop the entry of people who come in without documents and clearly can't cross legally.

It seems to me we are going to waste our resources, and choke the border, and prevent NAFTA from having much success.

Mr. THOMAS. Finally, I will stop. But I just have to tell you that I have been frustrated, as my associate down here, that government doesn't seem to look at the results and then go back and change the operation to change the results. We seem to have results that apparently are not acceptable—and certainly not acceptable to most of us—but that doesn't seem to change the process. The process goes on.

And I don't blame you or anyone, but I am pretty damn frustrated with the idea that government can't seem to change to make the results different. And I sense that that is often our case.

Mr. McNARY. Sure.

Mr. CONDIT. Thank you, Mr. Thomas.

Mr. McNARY. May I have a—make a point—

Mr. CONDIT. Yes, sir.

Mr. McNARY [continuing]. Respond to that?

There have been some things that have been suggested, and I would like to say, first of all that I think it is a mistake—I just want to be on the record—a mistake to separate Enforcement and Service. You further fragment Immigration by doing that. And you will—you have heard and you will hear that suggested. INS needs to be the immigration agency. We need to keep it together.

The suggestion of a fixed-term commissioner is a good idea. I know of no political involvement. In fact, it is hard to tell, Democrats and Republicans, what their position on immigration is. It is not really a political position. And so a fixed term or a nonpolitical position would provide some continuity.

And last, this question of getting something done, instead of hearing the same old problems again, I want to point out that that is—I could give you a lot of the things that are wrong and what needs to be fixed, but the root cause is an independent agency. INS is not going to change unless it is independent, unless it is in focus in both the executive and legislative branches of this government, instead of being—

Mr. THOMAS. If the gentleman will yield, you could hear that same argument from the Forest Service, or the BLM, or any agency. And you could have 1,000 agencies sitting around the White House, however, if you don't have—maybe there is more of a reason for this, but you hear that from almost all subagencies.

Mr. CONDIT. Mrs. Thurman.

Mrs. THURMAN. I apologize for missing your testimony. So I am going to go on a little bit more with the line of questioning that just happened. But I am going to try to take it from a different standpoint, because I understand that you did testify and saying

that you thought that many of the criticisms that came from these reports, in fact, have been taken care of.

So tell us—maybe give us some ideas of the kinds of things you did in particular that straightened out some of the stuff on the detention centers or some of the other kinds of criticisms with the fees that you believe that you have put in place today that will—so in that 5-month period of time, that we probably will be getting another report back that you can—that you will show that there will be some positive—

Mr. McNARY. OK. Well, first of all, the fees that are collected have gone to eliminate lines at airports. We still have some. But from a general overview, I believe that that problem has been solved. And we had long lines at airports, and the airlines were beating us up on a regular basis.

Fees for examinations have gone a long way. We still have a backlog, but we have cut it in half. And substantial progress, plus the automation to really provide those services on a current basis, is in place.

Mrs. THURMAN. So you have updated the—excuse me, I didn't—

Mr. McNARY. Yes.

Mrs. THURMAN [continuing]. Updated the automation system?

Mr. McNARY. Yes, but it has a long way to go.

Mrs. THURMAN. Is it on a—I mean, are we interfacing with everybody else there, or is it kind of online by itself, because we heard in a report yesterday with EPA that we had a lot of problems with information transfer from one part of the agencies to another. Are we doing link-up? Is it kind of constructed architecturally so that everybody can talk to each other?

Mr. McNARY. Well, you know, there are so many different areas. I can't say that there is a complete linkup on every issue at INS. But I can say that there has been an architectural study and that there is a game plan and movement in that direction.

And I think that even though they didn't move as fast as I wanted them to, because I hammered that issue, data processing is a must for INS. And it is an agency that my objective was to be paperless, ultimately. I think that one day that will happen.

The asylum situation is one. We originally hired and trained 80 independent asylum adjudicators. This is a very complex and sensitive issue, because there is a certain degree of expertise that goes with determining what the country conditions are and whether someone coming into this country has a well-founded fear of persecution, take some training.

We trained 80, and then we doubled that. We have 160 adjudicators, and those are the people I believe can go to airports. And you could even expand it to make a credible claim determination. And those who come in from London can be returned to London. I mean, they can claim asylum there. And somebody who comes from Canada—certainly the Canadians are not known for persecuting people. Why should they be—but those are the situations.

The enforcement, much was done to be more effective. If you have been to San Diego, then you know that a fence was constructed, that light sensors are there, that we are—and this is one

of those "how many birds in a flock?" But I believe that instead of catching one out of three, we would catch one out of two now.

And the pressures on getting across are such that they have—I believe that, because they have started running through the port of entry on occasion. We know that fewer are up on the highway. We know that fewer are at San Clemente at the checkpoint. And so I believe that there is some progress made in that area.

And the management itself, with TQM, participative management, the communications, the feedback, customer service—all of the principles of TQM have been instituted. The man who has led us through it is even here, with the PRC.

And you know, I don't know if too many agencies—a lot of them give TQM lip service. We took it seriously. And it is designed to bring a vast, widespread agency—see what I mean, a vast, widespread agency into a coordinated effort, where everybody feels as though he has a piece of the action and is working toward the same end.

And you know, what you heard here was outdated. And that is appalling, because it wasn't just me. We have got some first-rate people who were—when their positions were advertised, we took the top guy from State into Security. We took a top person into—as internal audit, you know. And still, it is as though nothing has happened.

Mrs. THURMAN. Thank you. I would just say then to you that maybe it was good that you had the last word. [Laughter.]

Mr. McNARY. Well, but I haven't, you know.

Mr. THOMAS. I already heard that the people who are going to follow, yes.

Mr. McNARY. We will be back next month.

Mr. CONDIT. But if we may, I want to be considerate of your time. And we are going to have to leave here in a couple of minutes to go and vote, and we are going to adjourn until 2 o'clock. I don't want you to have to stay here through that, so we are going—if it is not a burden on either of you, we would like to be able to submit questions to you in writing—

Mr. McNARY. Sure.

Mr. CASTILLO. Sure.

Mr. CONDIT [continuing]. Within a 14-day period. And if you can get it back to us, we would like that very much.

I do have some questions that I would like to submit to you, and maybe you could respond in writing.

[The information can be found in the appendix.]

Mr. CONDIT. I do want to give Mr. Horn the opportunity to ask one question before we do go.

Mr. HORN. One question. Commissioner Castillo, I enjoyed reading your statement. You've made some interesting suggestions. Mr. McNary, your statement I understood and agreed with a lot of it.

Labor did have INS at one part in its history. It is logical, it seems to me, for a lot of the Service functions to be decided by Labor. As a university president, I had to go through untold bureaucracy to hire a professor from India. And I am sure INS spent more time on that than dealing with 1,000 illegal aliens coming across the border, in terms of time consumed. So Labor could make

those judgments against the American work force and the needs of this society.

The enforcement role, however, it seems to me, with the Border Patrol, guns on the hips, having to carry out a tough law, having to have bilingual fluency, which most law enforcement services in this country do not have. Ideally, it could remain with Justice and to coordinate with the FBI, Drug Enforcement, whatever. I would like both of your reactions to that.

Unfortunately, if I am going to make that vote, you are not going to get me to grill you on a second question if I don't think you have answered it adequately, so I am going to have faith in you. And with that, I am going to depart. But would you answer that, both of you, for the record?

Mr. McNARY. Sure.

Mr. CASTILLO. Sure. My view is that the Border Patrol should stay within the Department of Justice, but separate. I think politically that is about as much reorganization as we could stand in one administration.

Ideally, many of these services of INS, such as Naturalization, should not be within the Department of Justice. Ideally, Naturalization should be at the Department of Education. Ideally, some of these labor needs should be within the Labor Department. Ideally, Asylum—probably some of that should be closely linked with the Department of State.

But practically speaking, mixing them or merging them at this time would mean that your committee would be involved for 4 years with enormous turf battles, with unions and with subcommittees and with members of the executive branch, and so on. So I am arguing for a very timid, cautious separation, simply of the Border Patrol at this time, to become an independent entity within the Department of Justice.

Mr. CONDIT. Lord knows, we don't need any turf battles here.

Yes, sir. Mr. McNary, you have a response to that?

Mr. McNARY. Yes. I don't think you really want the Service part of INS in Labor. Now, if you tried to get a teacher in here from India, then you might have had a taste of what Labor's position is.

You know, there is labor cert required on a number of visas to bring people in. Labor is not the right agency. I don't want to take your time, but Immigration is a specialty—you don't want to give it to Labor, and you don't want to give it to Treasury, and it needs to be kept together.

If somebody is in this country legally—and we check, as a matter of our duty, as to why they are coming into this country and they have a status—then it necessarily means that if they don't comply with our laws, they are coming in illegally. It is different sides of the same coin. It is a mistake in my judgment to divide INS up. It just needs to be kept together, expanded.

Mr. HORN. Well, it is very difficult to add any more independent agencies. The fact is the President of the United States cannot control the independent agencies he has.

Mr. CONDIT. OK. With that comment, we are going to recess until 2 o'clock. I appreciate both you gentlemen being here today. You have done an excellent job, and I appreciate it very much.

We will take panel three at 2 o'clock.

[Recess taken.]

Mr. CONDIT. We will reconvene the meeting and there will be members joining us in a few minutes.

I would like to thank Mr. Ruthizer and Mr. Wilson for your patience and for waiting for us. We do have a custom of the committee to swear in all witnesses, as I am sure you have noticed this morning. So let us do that.

[Witnesses sworn.]

Mr. CONDIT. Thank you very much.

Mr. Wilson, we will let you begin. And if you want to tell us anything about yourself, you are welcome to do that. If you want to read your statement or put your statement in the record and paraphrase, you are welcome to do that as well, whatever your privilege.

STATEMENT OF RICHARD J. WILSON, COORDINATING COMMITTEE ON IMMIGRATION LAW, AMERICAN BAR ASSOCIATION

Mr. WILSON. Thank you, Mr. Chairman.

It is my pleasure to be here this afternoon. I would like to submit my written statement for the record and supplement it with a few brief oral comments this afternoon.

I am here this afternoon on behalf of the American Bar Association through its coordinating committee on immigration law, which is a committee made up of representatives from nine of the largest sections of the American Bar Association.

I also come in my capacity as director of the international human rights law clinic here in town at American University at the Washington College of Law, where a significant portion of the cases which students handle are cases involving claims of political asylum.

First of all, I want to commend this committee for what has obviously generated a good deal of interest in the immigration community and your interest in the area of reform of the Immigration and Naturalization Service. The American Bar Association, on whose behalf I appear, has taken a long and strong interest in this area over the past several years.

My message on behalf of the association this afternoon is quite narrow and quite simple; narrow in the sense that my remarks this afternoon will deal only with the area of political asylum and the need for reform in that area; and simple in this respect—I think my bottom line and that of the association is simply that due process for those aliens who do enter and make claims of political asylum should be honored and that any reforms made in the name of economy should not sacrifice due process concerns on behalf of those who may or do face persecution in their countries of origin.

The current asylum program was significantly overhauled only 2 years ago. It was significantly improved, in response to a number of lawsuits and other reform efforts from asylum and other human rights advocates who widely criticized it and successfully litigated against the Immigration Service, bringing about a number of changes as a result of unfair, unreliable, and discriminatory practices on the part of the INS.

The two major changes which emerged from this reform were the creation of a set of new regulations, which, after nearly a decade in interim status, were finally adopted. These regulations incorporated current, proper legal standards for the determination of a claim of political asylum under domestic and international law.

The second change was the creation of an independent corps of asylum officers who review claims of affirmative political asylum made by those individuals who are not in expulsion proceedings. That corps of new officers has since been hired, trained, and is now in place and operational.

We commend the Service for those changes, and we believe that that process must be given time to develop and to take root; to work out the kinks which are necessary for it to come fully into fruition.

We do wish to identify, however, a few areas of problems within the asylum process in the Immigration and Naturalization Service. Perhaps the first, as far as our concerns go, is the backlog.

As we note in our written statement, the new corps of asylum officers inherited a backlog of over 114,000 cases before the time that their offices opened on April 1, 1991. That backlog now exceeds 250,000 cases and continues to grow each year because of settlement of the lawsuits that I referred to before, because of government policies which may, in fact, require the filing of an asylum claim when other options are available, and, third, because of the significant upheavals in the international arena which have resulted in mass migrations of refugees throughout the world.

The solution we would suggest is not a major reform. That reform occurred 2 years ago. It is, instead, to provide a corps of asylum officers with the resources which are necessary for them to be able to carry out the mandate of Congress and the Attorney General through the regulations which were adopted according to the Attorney General's authority to comply with our humanitarian obligations.

Problem two—and several of you referred to this this morning—is an issue regarding work authorizations for those individuals who do gain access to this country. As you are aware from our testimony, an affirmative applicant for asylum—that is, someone who is not in proceedings for either exclusion or deportation—may apply for an employment authorization document if the decision in the case takes more than 90 days and the applicant can prove to the satisfaction of the authorities that his or her application is not frivolous. We would note that this work authorization process does not apply to those individuals who arrive at U.S. airports without documents, claiming they are political refugees. A standard of frivolity actually has resulted in removal of a number of applications from the system.

The solution, we believe, is not to radically modify the access-to-work authorization for those individuals who have and should maintain the opportunity to earn a living while they are here, during the pendency of their asylum cases, if the case drags on too long. The problem is with the adjudication of these cases within the 90 to 120 day period which was originally contemplated under the law.

If the law, through the provision of adequate resources, were to provide the resources to the Service for it to perform these functions, these claims would, and I believe could, be adjudicated within the 90 to 120 day period. The case would be over, the individual would have no need to seek employment, and a decision up or down would be made about political asylum.

Problem three is the issue of the immigration official who is faced with an alien who may attempt entry with false documents or without documents. Several of you referred to the individual who may board an airplane, flush documents down a toilet, or otherwise abandon them so that they arrive without documents at an airport. Or these individuals may arrive with fraudulent documents, making a claim of political asylum.

Some proposed legislation purports to deal with this issue through reform. It is the view of the American Bar Association that it is not appropriate for the reform of the Immigration Service to adopt those proposals now pending before Congress which would allow officials either to make foreign determinations of asylum or for officials of the Customs Services or the Immigration Service to make on-the-spot decisions regarding exclusion as these individuals arriving at ports of entry.

A legitimate refugee is one who has a well-founded fear of persecution in his or her country of origin due to a political opinion, nationality, religion, social group membership, or race. These individuals arrive in great stress; most of them speak no English; they have no knowledge of the law and may not even have knowledge of their right to political asylum. Many of these people abandon their travel documents out of fear or shame.

Those officers who would be dealing with these cases do not have the knowledge of the law or of the quickly changing political situations in the countries from which these individuals come—which require a great deal of sophistication with regard to the current conditions—which may justify flight from those countries.

It is my experience and the experience from several cases documented in our testimony today that many asylum applicants actually prove their claim of political asylum by the use of fraudulent documents, by showing that they were driven to purchase fraudulent documents or to flee without documents at all as a last or sole recourse in order to flee because of their disparate fear of persecution at home.

Problem four—again referred to in testimony and in the news a great deal recently—is that of the possibility of terrorists who may make entry to the United States by claiming political asylum. We believe that the solution to the issue of international terrorism is not a radical modification of a system which was radically modified only 2 years ago and which, in the last fiscal year, yielded a rate of one-third of those applicants who came into the country who were able to establish, under the current rigors of the law, that they had a well-founded fear of persecution in their countries of origin, frequently based, in my own personal experience, on stories regarding or containing accounts of callous brutality, torture, loss of close relatives, and other wrongful activities by foreign government officials the agents or uncontrolled insurgent forces.

Moreover, current U.S. law requires detention of terrorists or serious felons or those who are at risk of absconding, whether or not they claim political asylum.

The ABA recommendations, which I offer today, are not new. They have been previously offered on a number of occasions.

First, we have proposed reallocation of detention space. The example we give in our testimony is unaccompanied minors, who could be released to a custodial adult who is willing to take those children, or those cases in which unduly strict bond determinations occur which occupy precious detention space, may open additional space for detention of those individuals who are serious felons, terrorists, or likely to abscond. Second, we recommend the elimination of duplicative and multiple filings in the immigration process. Several of the witnesses this morning provided you with ample evidence of the number of situations in which a multiple application must be made by an alien who has enough difficulty with the process—certainly my students have difficulty with the process. The necessity of filing in numerous offices or filing sequentially in order to obtain particular documents from the INS could be consolidated into a single process. Third, we recommended time limitations for final adjudications, a kind of default notion, by which the failure to act on asylum claims by the Immigration Service would be deemed an approval unless the Service could demonstrate by written finding that more time is needed in order to make its determination.

And finally, we have recommended the consolidation of administrative review in the Board of Immigration Appeals rather than the current process, which now permits, in several circumstances, parallel reviews, which can create confusing and conflicting decisions between the Service and the Board of Immigration Appeals, which is the legal body which should review all decisions made by Immigration judges and officials of the Service.

In conclusion, I want to say that I hope that in your review you are cognizant of some of the sensitive issues that come up in the immigration process through claims of political asylum. This is not, I would suggest, by any stretch of the imagination, an issue by which the bar in this country stands to gain financially whatsoever.

As has been pointed out to you, most of the individuals who file claims of political asylum do not have lawyers at all. They go through the process unrepresented. Those who do are not provided counsel at government expense, and most of the organizations that do provide counsel to these individuals do so on a pro bono basis through projects such as the Pro Bar Project in south Texas sponsored by the American Bar Association or my own clinic, which does not charge for its services. However, the results of the provision of counsel in the asylum process show that an applicant is more than three times as likely to be afforded political asylum if represented by counsel during the proceedings. I offer that as strong evidence that the individuals who seek political asylum frequently cannot adequately articulate their claims, that counsel is much needed, and that we must protect those due process guarantees which we now have in this country.

Thank you.

[The prepared statement of Mr. Wilson follows:]



AMERICAN BAR ASSOCIATION

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STATEMENT OF

RICHARD J. WILSON

on behalf of the

AMERICAN BAR ASSOCIATION

to the

SUBCOMMITTEE ON INFORMATION, JUSTICE,
TRANSPORTATION, AND AGRICULTURE

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

concerning

Improvements in the Immigration and Naturalization Service

March 30, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Richard J. Wilson. I am a professor of law at the Washington College of Law of The American University and director of the International Human Rights Clinic, a portion of whose caseload is political asylum. I also serve as a member of the American Bar Association's Coordinating Committee on Immigration Law. I very much appreciate this opportunity to appear before you today to present the Association's views regarding the administration of the Immigration and Naturalization Service.

Let me first commend the Subcommittee for conducting this inquiry to improve the operations of the Immigration and Naturalization Service (INS). For several decades, the Association has been concerned with INS efficiency and has advocated that the federal agencies charged with administering the immigration and refugee laws be provided sufficient resources to enforce and administer the laws effectively and fairly. The problems presented by the lack of resources are particularly acute and compounded by INS' competing service and enforcement responsibilities.

General Accounting Office (GAO) studies and Justice Department audits have identified numerous sources of mismanagement and waste within the INS which have resulted in mounting backlogs, delays, and hardships to American citizens, American concerns and institutions, lawful permanent residents,

and others who are seeking benefits allowed by law.^{1/} At the same time, delays have provided opportunities for some individuals to manipulate the immigration system.

The legal community is concerned that economic pressures coupled with a backlogged and overloaded system could result in the elimination of important rights and due process protections. The Congress should be particularly wary of proposals to achieve budget savings at the Immigration and Naturalization Service by "streamlining" the asylum and border inspection programs. Providing access to justice is fundamental to preservation of a democratic society and effective law enforcement, and should not be sacrificed in the name of the economy or efficiency.

The United States asylum and refugee policies have been passionately debated in recent years and come under heightened public scrutiny in recent months. The United States relies on the asylum program to meet its humanitarian obligations under domestic and international law to protect refugees fleeing persecution in their homelands. Asylum is a precious benefit and the exclusive remedy for refugees in the United States who face individualized persecution if forced to return home.

Under the Refugee Act of 1980, the Attorney General may grant asylum to an alien who demonstrates that he or she is a "refugee," i.e., has been persecuted or has a well-founded

^{1/} GAO, Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (Jan. 1991); GAO, Financial Management: INS Lacks Accountability and Controls Over Its Resources (Jan. 1991); GAO, Information Management: Immigration and Naturalization Service Lacks Ready Access to Essential Data (Sept. 1990); GAO, INS Bonds Delivery: Stronger Internal Controls Needed (Mar. 1988).

fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §1101(a)(42)(A). Even if an individual proves that he or she is a refugee, the Attorney General may deny asylum in the exercise of discretion. A person who is granted asylum (also called an "asylee") may obtain U.S. permanent residence after one year, may be joined in the U.S. by his or her spouse and children, and can later naturalize to U.S. citizenship.

Persons entitled to asylum may, by definition, face torture, imprisonment, or death as a result of an erroneous decision, so constitutional standards of due process mandate a broad range of procedural safeguards to minimize the possibility of error and ensure a fair and accurate determination. For many years, some criticized the INS adjudications as being unfair and the process as providing unreliable results. A number of class action lawsuits were brought against the agency claiming discriminatory treatment of applicants based on nationality.

In response to these criticisms, the asylum program was overhauled and significantly improved two years ago. An independent corps of asylum officers was hired and trained and regulations incorporating the appropriate legal standards were promulgated. 8 C.F.R. 208 (July 27, 1990). An individual who is not in expulsion proceedings may apply affirmatively for asylum with the Immigration and Naturalization Service. The process is intended to take 90-120 days from application to final decision. But, if an asylum adjudication requires more than 90 days for a decision to be reached and the application is determined to be non-frivolous, the applicant can receive work authorization while

the claim is pending. This process is not available to persons who arrive at U.S. airports without valid travel documents claiming that they are political refugees.^{2/}

Although the affirmative process may require further improvement,^{3/} it provides a vital avenue of relief to persons who cannot return to their countries owing to political conditions. 36.8% of the cases decided by the INS last year were approved. Unfortunately, there was a backlog of 114,000 cases even before the new asylum offices opened in April 1991, and backlogs accumulate every day. Many new asylum applications are attributable to the settlement of litigation, international upheaval, and government policies that require the filing of an asylum application.^{4/}

Critics, however, assert that the possibility of work authorization while an application is pending invites unfounded claims that overburden the system. They propose denying work

^{2/} Aliens in exclusion or deportation proceedings may apply for asylum only before an immigration judge in his or her immigration court hearing. This is an adversarial trial-like hearing, prosecuted by a government attorney, with opportunities to present witnesses and cross-examine evidence. A person who is denied asylum by the INS may renew his or her claim before an immigration judge during later deportation proceedings.

^{3/} See National Asylum Study Project, An Interim Assessment of the Asylum Process of the Immigration and Naturalization Service (December 1992) (lack of legal reasoning, application of incorrect burdens of proof, lost files, inadequate staffing.)

^{4/} Asylum application filings declined in FY1991 to 62,000 from more than 100,000 in FY1989 and 73,000 in FY1990. Asylum filings increased in FY1992, but they were significantly lower than the INS had anticipated and nearly half were filed under the Settlement Agreement in American Baptist Churches v. Thornburgh, Civ. No. C-85-3255 (N.D. Cal. Dec. 19, 1990). In addition, the INS required all 11,000 Haitians who were screened for asylum and admitted from Guantanamo Bay to file asylum applications upon arrival in the United States.

authorization, "streamlining" the system by reducing due process protections, or limiting access to asylum in various ways that could endanger refugees' lives.

The Association urges Congress to resist these quick-fix solutions. The most appropriate solution for deterring frivolous cases is to allocate sufficient funding and personnel to ensure prompt asylum adjudications followed by institution of deportation proceedings for ineligible applicants. If applicants were to receive fair decisions within 90 days of application, as intended, the incentive to apply for work authorization would disappear and the volume of asylum applications would, no doubt, decrease. Prompt adjudications would also benefit bona fide refugees who now anxiously wait up to several years for a decision, during which they are separated from family members whose lives may be endangered abroad. Timely adjudications would also be fairer to well-meaning applicants who do not qualify under our strigent laws but who acquire equities and become integrated into our society while their applications are pending, making eventual rejection and departure all the more difficult.

Canada has an asylum corps of 252 adjudicators for 30,000 applications per year. The U.S. had only 100 asylum adjudicators until last month and currently has 150. But, in the absence of clerks to open mail, respond to inquiries, and perform other clerical and administrative functions, we understand that these asylum officers spend much precious time engaged in nonadjudicatory activities. If the number of U.S. adjudicators and support staff were increased so that final decisions could be made before work authorization would be issued, abusive

applications would likely diminish, asylum adjudicators could begin to tackle the staggering backlogs, and bona fide refugees could reunify with their families and get on with their lives.

The border inspections process has also captured the attention of the public and Congress, in large part because it has been depicted by some as a backdoor to terrorists and other illegal immigrants. Fraud, misrepresentation, and international saboteurs are genuine issues. However, to the extent there is a problem, the remedy should not be one that results in procedures that adversely affect legitimate refugees and eligible immigrants.

In FY1991, the INS inspected nearly 300 million aliens entering the United States. 1991 INS Statistical Yearbook at 160. Nearly 900,000 inspected aliens were barred from admission. Of these 287,326 voluntarily withdrew their request for admission and left the country at the preliminary inspection. Another 605,537 individuals withdrew their request for admission during secondary inspection. Less than 2.5% of all persons denied entry requested exclusion hearings before an immigration judge on their claims of eligibility for admission, including for asylum. Ibid. at 145.

Proposals to simply eliminate exclusion hearings and give immigration officers at airports and other ports of entry the final authority to expel any alien who attempts entry without documents or who appears to present fraudulent documents are unwarranted and misguided. Under some proposals, an asylum seeker would have to prove to the satisfaction of the immigration officer at the border that he or she has "a credible fear of

persecution" and escaped directly from a country of persecution or from a country where "there is a significant danger" of being returned to a country of persecution.

These claims would have to be proved by refugees arriving at the border after a stressful and fatiguing journey, and without the assistance of counsel, an interpreter, or knowledge of our immigration laws. The summary exclusion procedures would afford the examining immigration officer complete discretion to decide an individual's fate without the involvement of any judicial or quasi-judicial officer. Moreover, an asylum seeker summarily barred from entry or applying for asylum could not seek either administrative or judicial review of the officer's decision. Arriving individuals would not even be apprised of their right to seek asylum by the inspecting officer.

Another proposal would station immigration inspectors at international airports abroad and authorize them to bar people who they suspect are ineligible to enter the United States from boarding their flights. This proposal affords even less protection from arbitrary exclusion and may require greater resources than the current system.

Both proposals are a radical departure from current procedures.^{5/} Travelers with valid documents could be mistakenly

^{5/} With certain exceptions, a nonresident alien must first obtain a visa abroad from the U.S. consulate. Prior to departure, the airlines are required to verify that all travelers carry a U.S. passport or a valid visa and travel documents. Then, upon arrival at a U.S. airport, port, or land border, international travelers are interviewed and their documents and belongings are inspected by INS border personnel and/or customs officials. If their documents or travel plans are suspect, the individual can withdraw his or her request for admission and leave the U.S., or be referred (continued on the following page)

barred admission. The proposals would also endanger certain refugees compelled to escape to freedom without valid immigration documents because there is not time to acquire appropriate documents or because applying for or carrying such documents would threaten their welfare.^{6/} Indeed, persons issued parking tickets are generally afforded greater procedural protections than would be extended to returning permanent residents, international travelers, foreign students and business people, or refugees fleeing persecution under these proposals. But these proposals are alarming from another perspective as well.

Janet Gilboy, a researcher at the American Bar Foundation, has examined the work of immigration inspectors at ports of entry. Gilboy, "Deciding Who Gets In: Decisionmaking by Immigration Inspectors," 3 Law & Society Review 571 (1991). She found that inspectors made preliminary judgments of "high-risk travelers" based on nationality.

"Little or no individualized inspection occurs; presentation of the country passport suffices to judge what type of individual is requesting admission. This handling implicitly reflects inspectors' notions about the individual's limited credibility, that is, lack of trustworthiness of statements or documents." at 587-588.

to "secondary inspection. If the second immigration inspector does not believe that the alien is admissible, the traveler can either depart the U.S. or have a hearing before an immigration judge. Individuals who seek hearings, whether for asylum or other purposes, may be detained by the INS without bond.

^{6/} Last year, for example, three successful asylum applicants represented by ProBAR (a pro bono project sponsored by the American Bar Association and the State Bar of Texas) attempted entry to the United States with invalid documents. Although each of these refugees, two Sikhs from India and an individual from Somalia, fled their respective countries with false documents, the immigration judges granting their cases considered the use of false documents consistent with their accounts of persecution and reasons for seeking asylum.

The reliance on such prejudgments in the inspections process should cause proponents of summary exclusion to reconsider their endorsement of this approach.

Moreover, concerns that terrorists may be able to walk out of our airports claiming asylum are addressed in current law. The INS is mandated to detain and exclude any alien who is a terrorist, and to detain serious felons and others who may endanger the public, whether or not they claim asylum. 8 U.S.C. 1225(c) and 1226(e).^{7/} If the problem is international smuggling rings and syndicates that sell counterfeit documents, giving INS border agents final decisionmaking authority to guess which documents are real and which aren't is not the solution. Similarly, to the extent the problem is caused by inadequate detention space, the INS should examine the allocation of existing detention facilities. Congress should not seek savings by cutting inspections or eliminating exclusion hearing rights.^{8/}

Over the years, the Association has made a number of recommendations to increase INS administrative efficiency. We believe that they will also decrease costs. Our recommendations include the reallocation of detention space, consolidation of adjudications for the same applicant, establishing time limits for various types of applications, timely promulgation of regulations, and a single entity for administrative review.

^{7/} In addition, the law regarding the detention of dangerous excludable aliens is so stringent that 1800 Cubans have been detained for more than a decade because the U.S. has been unable to deport them to Cuba.

^{8/} The GAO found that nearly one-third of the costs of airport and seaport inspections are attributable to "excessive overtime." Immigration Management GAO/GGD-91-28 at 57-59.

At present, scarce and costly detention space is used to detain unaccompanied minor children who could be released to responsible adults and bona fide asylum seekers pending their hearings. The ABA has on repeated occasions suggested that the INS implement conditional pre-hearing release programs similar to those common in court systems across the country, rather than detain them.^{2/} The INS could then utilize the existing detention space for persons likely to abscond or who pose a security risk.

Benefits under the immigration laws may entail the approval of more than one application or petition. The Association believes that the INS can operate more efficiently and decrease backlogs by consolidating adjudications and considering all related applications from the same individual at the same time.

For example, the spouses and children of aliens who legalized under the Immigration Reform and Control Act of 1986 may receive permission to remain in the U.S. and work until their immigrant visas are available. Applications for this "family unity" program are filed and adjudicated with the regional service centers. Thereafter, an approved applicant must apply for a work authorization document at the district office. The process requires multiple applications and is twice as long as necessary for both the INS as well as the alien.

In many cases, the beneficiaries of immigrant visas must also file multiple documents, including a petition and supporting documents with the regional service center followed by an application for adjustment of status and interview with the

^{2/} See ABA Coordinating Committee on Immigration Law, Lives on the Line: Seeking Asylum in South Texas (July 1989).

district director. If the individual is not eligible for adjustment, he or she must file the INS-approved petition and appropriate documents with the U.S. consulate abroad. If a waiver of inadmissibility is required before the visa can be issued, the applicant must file a separate waiver application after the consular interview which is then forwarded to the INS for adjudication.^{10/} Such sequential consideration is wasteful and usually results in lengthy delays.

The Association has also proposed that time limits be established for the final adjudication of various types of applications, with a stipulation that failure to act within a specified time will be deemed an approval of the application unless there is a written finding that additional time is needed to complete a pending investigation. Such time limits should provide an additional incentive for the INS to improve its service delivery.

The INS has also had difficulty promulgating regulations in a timely fashion. For example, Congress directed that the family unity program, discussed above, take effect on October 1, 1991. However, the INS did not propose implementing regulations until August 30, 1991, and did not issue even interim regulations until February 25, 1992. The delay imposed hardships on the family members whom Congress intended to benefit and appears to reflect

^{10/} Perhaps the most striking example of unnecessary duplication of functions occurred in the implementation of the Immigration Reform and Control Act. An individual who was eligible for the benefits of the general legalization, special agricultural workers', and Cuban-Haitian Adjustment programs was required to file three entirely separate applications with supporting evidence and filing fees at two different INS offices, and was required to have separate interviews.

the secondary status attributed to public service functions within the agency. Such regulatory delays also compound the INS's enforcement and service delivery problems.

The Association has also recommended that all administrative reviews in immigration cases be considered by the Board of Immigration Appeals (BIA). At present, some INS decisions are appealed to the BIA, while others are appealed to the Administrative Appeals Unit. Entrusting all appeals from immigration determinations to a single appellate body would end the confusion and irrationality inherent in the present approach and result in greater uniformity of decisions. Such a change may produce other economies as well.

In conclusion, the INS adjudications and enforcement operations, as well as the immigration court system, suffer from the same problems as does the entire justice system -- long-term neglect and underfunding. The Association believes that solutions can be achieved without sacrificing fair process, and that the alternatives could be disastrous. Denial of access to justice -- whether denied outright or as a product of inadequate funding -- "encourages disillusionment with and disrespect for a system designed to protect fundamental rights and liberties. If this erosion in confidence continues, our ability to defend basic human rights will be decreased." ABA Blueprint for Improving the Civil Justice System 51 (February 1992).

Again, thank you for allowing me to express the views of the American Bar Association to the Subcommittee.

Mr. CONDIT. Thank you very much.

Mr. Ruthizer.

Mr. Ruthizer is the president of the American Immigration Lawyers Association.

STATEMENT OF THEODORE RUTHIZER, PRESIDENT, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. RUTHIZER. Thank you very much, Mr. Chairman.

The American Immigration Lawyers Association, of which I am this year's president, is in a unique opportunity to offer a different perspective before the subcommittee this afternoon. And that is a perspective which you haven't heard from any of the other witnesses; that is the perspective of the consumer of the services.

Our 3,500 members represent a broad spectrum of foreign nationals who have dealings with the Immigration Service, and they include representing large American companies, large foreign companies, mid-sized and small companies, as well as individuals with U.S. family member relations and people who may find themselves in exclusion or deportation proceedings.

So we have a broad experience in dealing with the Service, and it is with that orientation that I want to tell you that it is our view that the Service is in disarray. And it is in disarray for a number of reasons.

One, which you heard earlier this morning, is the conflict between the dual function of Enforcements and Examinations. Now, it had been mentioned by one of the panel this morning that this perhaps is no different from IRS doing audits and providing tax advice, but I think it is a significantly different function. I think it is more akin to asking a local police station to also give out food stamps. It is an agency which, as former-Commissioner Castillo had testified to, has normally promoted people from within the enforcement ranks. And it is from within Enforcements, that the agency has generally been run.

While I understand that the subcommittee has a very serious and legitimate concern about the enforcement of our immigration laws, it is our position that the other mission of the Immigration Service—that is, the Service mission—is equally important. That is providing benefits to hundreds of thousands of people each year, not only on granting permanent resident status, which is the 700,000 visas that were allotted under the 1990 Immigration Act, but also the several hundred thousand nonimmigrant visa petitions and applications and change-of-status applications that are filed each year with the Immigration Service.

So it is from this perspective that we come to you. Some of the problems that you will see detailed in much greater length in our written statement include very long delays in the examination process. For example, individuals who wish to become naturalized as U.S. citizens will often have to wait upwards of 1 year or more, depending on which district office they happen to live in.

Other applications—for example, adjustment of status as a permanent resident—may take anywhere from several months, which is not so bad, up to a period of over 1 year—which we consider to be excessive.

There are other delays as well in many of the applications, including employment authorization applications, and the asylum application that Professor Wilson has mentioned. And this is just the tip of the iceberg. And we think that a large reason for these delays is the fact that the enforcement side of the agency tends to have sway over the examinations side.

And I commend to you a study, as has been suggested earlier, for a bifurcation of the agency. I don't know whether this is necessary, but I think it is necessary to take a look at whether, in one agency, those two functions can coexist. And if they can coexist, how can a career ladder be designed and how can power be distributed so that the examinations side, which represents a very important function of the Service, not be given short shrift.

Many of you on the panel have staffers in your home districts who help constituents with immigration services. And I suggest that if you were to talk with them, I think they would recount to you the many difficulties they have in dealing with the Immigration Service. I want to say that there are some very excellent and very committed people at the Service, but there are also many people, particularly at the district levels, who lack civility, who have no sense of courtesy, who are not terribly efficient. And where is the control coming from?

When former Commissioner McNary said that it was his objective to centralize and try to get greater control over the Service, I second that. One of the great problems that the Service has suffered ever since the 1950's has been this notion that there are separate immigration services depending on the district in which someone happens to live.

There are 34 different district directors around the country, many of whom run a very tight ship and many of whom who do not. And they are really not terribly responsive to the needs of the headquarters office of the Immigration Service.

Similarly, there are four regional offices. Former Commissioner McNary said that when he became commissioner it was as if there were four separate Immigration Services. It is now 4 years after Commissioner McNary took office—and those regional commissioners continue to exist. What do they do? What is their function?

I was speaking with a former regional commissioner yesterday in preparation for this testimony. And he said, "I don't know what they do. When I was the regional commissioner, we had appellate functions. We actually had directed supervision over the district offices. None of that is done by the regional offices now, yet their budgets are larger than when I was regional commissioner, and nobody really knows what they do." So I suggest that someone needs to take a look at that. We favor greater centralization.

I want to bring to the subcommittee's attention that, within the area of adjudications, several years ago the Immigration Service decided that the districts could not have a uniform system that would work, that would allow applications to be tracked so that they would not be lost, so that people would know what would happen to them, so that they would get a quick determination. And they set up regional service centers—there are now four of them around the country—which do a great many of the direct filings.

Many of the applications go directly to the service centers. There is one for the South, the North, East, and West. That is set up; that has been very successful. The immigration has encouraged that, and we would like to see that expanded. But what has happened is that you still have the 34 district offices which continue to resist the use of the regional service centers.

So you have an awful lot of energy and resources that are going into these internal squabbles within the agency. To give you a very recent example, when someone applies for permanent residence status based on either a finding that their U.S. employer has demonstrated to the Labor Department that there is a shortage of qualified Americans for the position being offered or there is a close family relation with a U.S. citizen or permanent resident—when that person then applies for permanent resident status, there is a required interview procedure.

To schedule that interview can take upwards, as I mentioned earlier, of almost 1 year in some of the districts. We brought this to the headquarters' attention in Washington, and we said, "Is it necessary to have interviews? There is very little probative evidence that comes out from these interviews. Normally you can spot a case that can be approved readily based on the papers. If there is a problem, then why not have an interview?" And headquarters thought about it, and, to their credit, they agreed with that assessment.

And what happened afterwards, I think, is symbolic of the disarray that the agency finds itself in. Rather than implementing a procedure whereby the service centers—as many in the headquarters office wanted—would get these applications, would rule on them, approve most of them, and do that in a speedy way, and then send those few cases back to the districts that did require an interview, the district directors said to headquarters, "Well, what are we going to do with our people? We have resources here, we have budgets for these. Let us do that." So a lot of energy was spent on that squabble, and that ended up with the cases remaining in the district's jurisdiction.

Now, obviously, this is not the most significant issue that there is in the immigration context, but I think it is very typical of the kind of battles that are being fought, the internal turf wars.

One other example that I want to bring to your attention of how Enforcement sometimes skews the proper agenda for the Immigration Service is the Green Card Replacement Program. During the last year, the Enforcement side of the Service decided that this would be a major priority, to have everyone whose green cards were issued earlier than 1978 turn in their cards and make a physical appearance at the local Immigration Service office, pay a \$70 filing fee, and get a new card.

The theory that was propounded was that this would eliminate fraud, that the older cards were easier to duplicate. Yet this has not turned out to be the case. The new cards are no more counterfeitproof than the older cards. It caused a deal of disturbance among people who have been long-time permanent residents. And what is worse, it has now backlogged the Immigration Service from doing more pressing functions. That was litigated, and the

Service has voluntarily backed off from that now, but after a great deal of energy was expended on this.

So I think these are typical examples of the kinds of planning issues that we think the Service is not addressing itself to.

And we would recommend to the subcommittee that after your investigation of these issues, that you seriously consider whether bifurcation is necessary. And if you do, we would say that Inspections and Examinations ought to be within one independent agency in Justice, and the Enforcement side ought to be in another.

And there is precedent for bifurcation—this was what was done for the Immigration Court several years ago, setting up a separate agency within the Justice Department—for your subcommittee to determine whether that is necessary; and if you feel that it is not, then to provide some guidance to the Immigration Service as to how it could better manage its functions.

Thank you.

[The prepared statement of Mr. Ruthizer follows:]



AMERICAN IMMIGRATION LAWYERS ASSOCIATION
AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

STATEMENT OF THEODORE RUTHIZER
PRESIDENT

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

BEFORE THE SUBCOMMITTEE ON
INFORMATION, JUSTICE, TRANSPORTATION, AND AGRICULTURE

COMMITTEE ON GOVERNMENT RELATIONS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON THE IMMIGRATION AND NATURALIZATION SERVICE

MARCH 30, 1993

INTRODUCTION

Chairman Condit and distinguished members of the Subcommittee:

I am pleased to have this opportunity to testify on behalf of the American Immigration Lawyers Association (AILA) concerning the general operations and management of the Immigration and Naturalization Service (INS).

The American Immigration Lawyers Association is a national bar association of over 3,500 attorneys who practice immigration and nationality law, representing U.S. individuals, families, employers, and the new Americans they sponsor. Founded in 1946, AILA has thirty-three chapters nationwide and is an Affiliated Organization of the American Bar Association.

AILA commends Chairman Condit for his initiative to review the management and operations of the INS. As the major group of professionals representing both U.S. petitioners and alien beneficiaries, we see the daily impact of our immigration laws and are well placed to observe INS operations and services. On behalf of our clients, AILA has a vested interest in the efficient, responsible management of INS functions.

AILA welcomes open discussion regarding the many managerial challenges presently facing the INS. We are well aware of the complexity and enormity of the Service's workload and the difficulty of balancing its dual mission of providing services to legal entrants and candidates for citizenship and enforcing immigration laws and prohibitions. Nonetheless, as this organization has testified elsewhere, AILA is deeply concerned about the overall direction of INS, the management of its finances, and its ability to efficiently and effectively serve the citizens, permanent residents, and businesses that are dependent on its performance.

SUMMARY

Mr. Chairman, in this testimony, I intend to convey to this Subcommittee our general concerns with the overall management of the Service. Where appropriate, I will offer illustrations of where we feel the Service's ability to operate efficiently has been compromised by managerial or operational flaws.

As immigration practitioners, our members work on a daily basis with representatives of the Service on all levels of its operation, and we are therefore not blind to the daunting tasks that have been relegated to the Service. There are a number of exceptional individuals working for the INS, and we appreciate the genuine efforts that they expend to improve its operation, management, and public service. In particular, we commend the efforts of those service centers which have proven their ability to conduct timely and fair adjudications, those district offices which maintain efficient and courtesy operations on shoe-string budgets, and the Asylum Branch for its cooperative spirit and commitment to equitable and efficient adjudication. Their struggle against limited resources and the internal animosities that plague the agency is praiseworthy.

Our admiration for these persons, however, does not lessen the frustration that we feel as representatives of persons seeking immigration benefits whenever we encounter ineffectual central planning and management and systemic disregard for authentic public service. We cannot excuse the serious management problems that have marked INS service provision for years. In the last two years, AILA has testified before Congress regarding chronic problems, such as the long lines outside district offices, the intolerable backlogs of adjudications, and unreliable informational systems. Yet, despite even the attention paid by the Government Accounting Office (GAO), the Department of Justice, and other groups, INS services just never seem to improve and the explanations for failure are seldom satisfying or convincing.

Our evaluation of the management and performance of INS can only be based on its ability to adjudicate petitions and applications in a timely and accurate manner, and on this basis we cannot speak favorably of INS service delivery. We see fee increases, but no change in the quality or timeliness of services. We point out opportunities for increased efficiency, but our observations are often dismissed or shelved for further study. We call for improved adjudications and backlog remedies, but hear more often of new enforcement initiatives. Indeed, we perceive an agency so preoccupied with enforcement that it unduly compromises its commitment to adjudications and naturalization.

It is our hope that a new Administration and new leadership in the Department of Justice will thoroughly evaluate the management and operations of the INS. We strongly encourage the Attorney General and Congress, through oversight and other monitoring, to take a critical look at the lack of service at the Immigration and Naturalization Service and their reasons for this failure.

Before going into the body of my testimony, allow me to point out two things. First, I have broken my testimony down into three parts: (1) a discussion of "horizontal" problems

Testimony of Theodore Ruthizer
March 30, 1993
page 3

within INS, i.e. weaknesses that exist on the national policymaking level due to the conflicting roles of the agency, (2) a discussion of "vertical" problems at INS, i.e. problems that exist among three levels of INS (the Headquarters Office, the Regional Service Centers, and the district offices), and (3) a brief recitation of recommendations as to what Congress and the Attorney General might consider to improve the management and operation of INS.

Second, there are pressing and important topics that I have elected not to discuss, such as INS detention policy and procedural due process. With regard to these topics, I defer today to my colleagues from other organizations who are speaking before this Subcommittee. However, should this Subcommittee wish to focus on these topics on another occasion, AILA will be happy to prepare remarks at that time and appear again, if it is your wish.

Testimony of Theodore Ruthizer
 March 30, 1993
 page 4

REMARKS

1. INS' lack of integrated priorities at the national level results in a fatal imbalance between its enforcement and service functions.

INS is in the unenviable position of having the dual mission to enforce our immigration laws and dispense our immigration benefits. However difficult that may be, INS is still constrained to balance those functions, and not execute one at the expense of the other. Yet our experience has overwhelmingly been that INS is, in practice, dominated by the culture of enforcement values and attitudes and that this orientation diminishes and impedes the provision of quality services to the intended beneficiaries of our immigration laws. There are three problem areas that demonstrate an unacceptable devaluation of INS service function.

a. Perpetual backlogs indicate a lack of commitment to services.

One of the most troubling difficulties with INS is the way in which lengthy backlogs have become status quo for many important immigration benefits. Given the persistence of processing delays in highly critical determinations, the public must conclude that INS does not hold benefits and services in very high regard. The agency's apparent lack of commitment is manifested, by way of examples, in the following areas:

Employment Authorization. Many district officers are, for lack of staff, incapable of processing an application for employment authorization in less than 60 to 90 days. The hardship to the public is obvious. Persons who would otherwise be eligible to work -- persons with families, individuals who need employment income to survive -- are ineligible to do so for two to three months while INS processes the simple application. Such waits are unconscionable given the importance of the benefit.

Naturalization Interviews. Depending on the district, it can take over a year to receive a naturalization interview. This sort of a delay is not a mere inconvenience. Persons who are eligible and anxious to become U.S. citizens -- and active participants in a democratic process -- are being denied the right to vote and unfairly prohibited from petitioning for parents or other close family overseas simply because of administrative backlogs. It is embarrassing that we give such a mixed signal to our newest neighbors. We encourage permanent residents, on the one hand, to become citizens as soon as possible, but then, on the other, we make them wait many months for the brief interview required to do so.

Testimony of Theodore Ruthizer
 March 30, 1993
 page 5

Asylum Applications. Asylum adjudications are significantly lagging. However, much of the current delay is the direct result of understaffing and the limited provision of resources for the new asylum corps. AILA supports the new INS asylum program and would very much like to see it succeed, but the inability to promptly adjudicate asylum cases threatens the entire program. Delays not only postpone the recognition of deserving asylum-seekers, but also attract frivolous applications that bog down the entire system and compromise its effectiveness for legitimate refugees. While the asylum system could work to weed out frivolous applications, INS delays prohibit that and thereby facilitate abuse of the asylum system and illegal immigration.

Adjustment of Status. Persons applying for adjustment of status to lawful permanent residents should be able to have their applications approved promptly. These persons are the immediate relatives of U.S. citizens, seeking to be reunited with their spouses, or labor-tested employees needed by U.S. companies. In many INS district offices, the wait to be approved is taking upwards of one year. In addition to inconveniencing the public, these delays in adjustment also generate avoidable work for the INS, which must adjudicate extensions of status, advance parole applications for travel while the applications are pending, and similar applications.

The benefits discussed here are not luxuries, but entitlements and necessities, and yet INS seems to tolerate chronic backlogs or fails to devise meaningful solutions to those backlogs. The tenacity of adjudications problems suggests INS is failing to balance its bifurcated duty and that INS' management is not fully committed to resolving service-delivery problems.

b. The Green Card Replacement Program illustrates INS' undue interest in promoting its enforcement function.

A recent and clear illustration of INS' enforcement bias at the expense of adjudications is the temporarily aborted "green card" replacement program.

In June 1992, INS announced a special program under which current permanent residents had until August 1993 to replace their green cards if those cards were issued before 1977. This program, INS explained, would remove easily counterfeitable green cards from circulation, and allow INS to issue a new, harder to forge version. On its face, the program sounded reasonable.

Testimony of Theodore Ruthizer
 March 30, 1993
 page 6

However, once the details of the program were scrutinized, controversy swelled, and permanent residents began to ask: Why is INS suddenly concerned with replacing decades old green cards? Why is this program being started when there are huge backlogs in naturalization? Why is INS demanding a \$70 application fee, when most states barely charge \$20 for a driver's license renewal? Where is the \$10 million in start-up funds coming from, and if that money has always been there, why wasn't it being applied to the backlogs?

Under careful review, the program was not as reasonable as it seemed. First, the new cards, though more secure, were not the improvement INS claimed they were (in fact, fraudulent copies were already in circulation when the notice was first published). Second, start-up funds were being drawn from the Examinations Fee Account, a fund created by application fees' surplus, and were meant to be directed back into examinations/services programs and not enforcement activities. Third, the bulk of the \$70 fee was going toward INS' "indirect" operating costs, completely separate and apart from the direct costs of verifying applicant eligibility and producing a new card. Fourth, INS was erecting a replacement card program at a time when new and potential permanent residents were waiting months to get their first green card, potentially diverting further resources away from the backlogs toward the more lucrative replacement program.

At the outset, many groups objected strenuously to the replacement program, but the objections fell on deaf ears. Ultimately, it took a class action suit in California -- challenging the legality of the green card replacement program on the basis of the high cost, the failure to observe the Administrative Procedure Act (APA) and immigration statute, and other things -- to stay implementation of the program. In functional concession to the APA-related charges, INS has now made the program voluntary, until such time as it can publish regulations for public comment and otherwise observe federal rulemaking requirements.

Despite the qualified retraction of the program, the illustration of myopic management remains. From our perspective, the green card replacement program has all the markings of insufficient planning: A poorly thought out program was rushed through, by proponents who either did not anticipate its potential for controversy or did not care, and implemented it without the benefit of Congress' or the public's input. These same proponents also ignored or dismissed how the replacement program might affect service programs, such as naturalization, which stood to lose desperately needed funding and attention.

c. Examinations fees and fiscal management in truth serve enforcement interests.

We perceive the green card replacement program as just one instance in which INS inability to balance its functions compromises its commitment to render services. INS'

Testimony of Theodore Ruthizer
March 30, 1993
page 7

mysterious process for fee-setting, and its questionable handling of the Exams Fee Account (in which fee surpluses go), is on-going evidence that enforcement encroaches on service delivery.

In the past couple of years, INS has raised the application fee on over thirty different applications and petitions (covering the entire range from immigrant visas to permanent residence to naturalization), has assigned new fees to a handful of others, and is contemplating yet more fee increases in the near future. While some of the fees have a deleterious impact on the public, the burdensomeness or impropriety of individual increases is, in our minds, not so much the question as whether increases are truly necessary or truly effective. We observe a sort of "fee inflation" taking place, with no empirical evidence that services are being improved at all. The spiraling fees unfairly burden the public and suggest unsound management or management indifferent to service provision.

Moreover, it is not at all clear how fees are determined and what information is used to make such determinations. What little we do know makes us uneasy. Fees are computed on the basis of a number of relatively nondescript, untraceable expenses, such as "indirect costs" (as in the green card replacement program) and "recurring costs." While INS has offered limited explanations of its totals, the response has been unsatisfying and unconvincing. Despite reassurances that INS is not rerouting service funds into enforcement, our reading of the recent reprogramming suggests very much to the contrary.

In summary, INS' commitment to service delivery is half-hearted at best. At the senior policy levels, INS is failing to place sufficient emphasis on the provision of benefits, and without greater priority being placed on services, INS cannot adequately serve that function of its dual mission.

2. INS lacks the centralized management necessary to provide services.

In addition to the conflict with the public in recent years, INS has also been subject to much internal strife as well. There has been and continues to be an ongoing power struggle within the agency that has been percolating since its decentralization in 1955. The Headquarters Office continues to struggle to regain control over the field, many district directors cut paths of their own, and the regional officers are protective of the autonomy that has evolved. The end result is an agency that lacks unified policy, standards, and procedures.

Testimony of Theodore Ruthizer
March 30, 1993
page 8

a. The Headquarters Office is not able to standardize policy or practice nationally because it has not reduced organizational tensions.

There are a number of obvious problems that result from lack of centralization.

One such problem is communications. The Headquarters Office is trying to overcome parochial information systems in the local offices that are not standardized or coordinated with INS headquarters. The logistical inefficiencies of communications -- not to mention the potential for "political intrigue" when field offices do not want to exchange information -- create very real administrative barriers to the provision of quality services.

A second problem is the resistance of the regional offices to the Headquarters Office's efforts to centralize power and control. It is challenging, to say the least, to impose standards from without after a large operation has grown accustomed to its independence. Yet, as GAO has observed, the lack of regional accountability has resulted in cost overruns (since regional managers have been known to overspend their budgets and disregard national fiscal policy), and some control must be exercised. The Headquarters Office has its hands full with trying to wrest control away from, what some critics would call, the fiefdoms of the regions.

Another, related problem is the lack of confidence the regional and district offices have in the Headquarters Office. The habits of autonomy aside, many field officers are inherently skeptical about organizational initiatives from Washington. They feel that the Headquarters Office is too distant from the realities of the field, too unresponsive to their concerns, and are therefore resentful of what can be seen as clumsy attempts to impose standardization on offices that, from their own perspective, do not need outside instruction on how to operate. The Headquarters Office's failure to offer sufficient financial and personnel support does little to foster improved relations.

A whole other layer of mistrust and rivalry exists between the Regional Service Centers and district offices. The Headquarters Office's has not been able to resolve certain conflicts that have a direct impact on the provision of services. Discussions over which layer is responsible for employment authorization and other adjudications have made some district directors a little jittery. For example, a recent Headquarters policy decision to permit the waiver of required adjustment of status interviews was delayed for many months and later substantially diluted by internal disputes over who best could handle this function. Recent experience indicates that the Regional Service Centers could most effectively handle direct filings of the adjustment applications and deciding whether to grant the interview waivers. Nevertheless, the district offices successfully lobbied Headquarters to retain this authority, despite the long backlogs in many of these same offices, and the district offices have been very slow to implement the interview waiver directive with little guidance being

Testimony of Theodore Ruthizer
 March 30, 1993
 page 9

provide by the Headquarters Office.

On the whole, this diffusion of power undermines the effectiveness of overall service delivery. The problems facing the Headquarters Office with establishing authority over the regions and districts translates directly into ineffectual central planning and perpetuates the diffusion of power.

b. The Headquarters Office has not resolved inconsistencies among its many field operations.

The evidence of ineffectual central planning is apparent when one looks at the markedly varied processing times for benefits in the different district offices. In April 1993, for example, the wait for the initial naturalization interview was as short as three months in some areas, but extended to as much as 45 months in others. Permanent residence applications in that time period varied just as dramatically -- from one day to 330 days, depending on your district.

(Our association keeps a rough accounting of how different district offices are doing, based on information collected from our membership and, in some cases, from INS district offices. For illustration, the most current "report cards" are attached at the end of this testimony as an exhibit.)

The variance is deeply troubling. Setting aside the sheer inequity of the availability of benefits being relative to where you live, this inconsistency does not speak well to the Headquarters Office's ability to centralize policymaking. Nor does it speak well of INS commitment to prompt adjudications, since some offices are able to process quickly and the Headquarters Office has apparently failed to learn and capitalize off their experiences.

c. If services funds were routed more readily to the field, it would be easier to centralize.

While we appreciate that each district office has its own peculiar factors that affect processing times, referencing the size of the community or volume of applicants does not explain away -- nor ameliorate -- the inconsistencies that produce duplication and therefore additional work for the INS. The real problem is that local INS offices are not being provided with the resources or personnel they need. Our perception is that some of the district offices are being "starved" for funds and are forced to operate on barely adequate means. Clearly, insufficient funds and manpower have a direct impact on what services district offices may provide.

Testimony of Theodore Ruthizer
 March 30, 1993
 page 10

3. There exist general solutions to INS management problems that should be explored.

I offer a number of suggestions on how INS management problems can be addressed. I will keep my discussion general, but AILA would be happy to develop more detailed recommendations and share them with this Subcommittee, the Attorney General, or the INS, as we have in the past.

a. INS should make "service" a true priority.

Clearly, the first step to remedying management problems within the agency would be to restore some balance or harmony between the enforcement and service functions. One way in which this could be done would be through an aggressive administrative campaign to re-orient agency decision-makers.

INS leadership needs to assume a more "customer service" orientation than it is accustomed to taking. There are a number of steps that could be taken:

Assume a service industry attitude. INS has a reputation as hostile and unresponsive to the needs of the public. For example, our experience has consistently been that district offices tend to take the position that files lost in the remoting process are the problem of the applicant/petitioner. Few systems exist to track down a file, and most personnel are indifferent to the pleas of the questioner. If INS intends to satisfy its service function, its management should strive for the attitude so ubiquitous today in the service industry, that serving the "customer" is the organization's main mission and goal.

Engage the public more often in problem solving. INS should consult with the consuming public more often and engage the public more frequently in problem-solving. There are community-based organizations, bar associations, and other groups who stand ready to help educate the public and to take an active role in facilitating adjudications, and they can throw their resources and credibility behind mutually acceptable solutions.

Provide adequate funding to regional services centers and local offices. INS must make a greater commitment to bring staffing up to fully funded levels. A number of regional and local INS managers have complained to us that restraints on the prompt hiring of funded staff has resulted in a widening spiral of inefficiencies and backlogs. Whether adjudications are simple or complex, services cannot be provided without the requisite personnel to provide them.

Testimony of Theodore Ruthizer
 March 30, 1993
 page 11

More clearly demarcate between service and enforcement monies. So long as INS has difficulty separating its two functions, service-marked funds should be firmly segregated from enforcement activities and not used, directly or indirectly, to shore up enforcement programs. Since INS has historically been unable to resist the temptation to shuffle funds between functions, an independent monitor should be designated to oversee how monies are spent based on their actual use, not their line item description. Not only would some degree of monitoring assuage public doubt about fees, but might help guarantee that regional and district offices are receiving the financial support they need to serve the public properly.

Fully implement the Total Quality Management Program. INS has reportedly instituted a program of Total Quality Management (TQM), which is designed to improve INS service delivery components, largely in response to criticisms by the GAO. Thus far, that program has yet to manifest itself publicly.

Create incentives for INS officers. INS should examine how it can offer greater incentives for personnel and decision-makers to be service oriented. For example, the traditional career path inside INS has favored law enforcement in setting up professional steppes. A more rational career path would be a significant first step toward helping INS officers to execute services better.

b. INS should better coordinate its various levels and engage in more integrated planning.

As alluded to earlier in this testimony, INS needs to further centralize and standardize its policymaking and its priorities. Decentralization is a proven failure, and the organizational power now diffused among regional offices, Regional Service Centers, district offices, and national headquarters must be coalesced into one definite seat of authority and planning.

As concluded by the GAO, INS needs aggressive leadership on the national level in order to develop better and firmer relationships between the Headquarters Office and the regional and district offices. The next Commissioner and staff must take further steps toward reversing, as GAO described, the "geographic fragmentation of programmatic operations" and further reinstate centralized control.

There is one proviso, however. Such centralized planning should be careful to take into consideration the inherent variations that exist between field offices and communities. Policies must be sensitive to the often parochial nature of field administration, and it is therefore essential that any centralization is attentive to local concerns, local offices, and

Testimony of Theodore Ruthizer
March 30, 1993
page 12

local publics. INS must be careful to avoid perpetuating the distrust that is so problematic now.

c. Provide support from other areas of government

The Service is, in many respects, at a crossroads.

There is a confluence of factors that makes this time ripe for revamping of the agency. First, the need for change in INS is obvious. The GAO, the Department of Justice, my organization, and many like it have long observed with dismay management and operational problems in INS that long ago were already intolerable. Second, the very tenacity of management problems creates an urgency that should not be ignored. Critics both inside and outside government agree that improvements can no longer be delayed. Third, the political alignment invites more objective and collaborative efforts to reform the agency. For too long, criticism of INS management was labelled partisan politics and too readily dismissed. A critical, constructive, and bipartisan evaluation of INS may be more possible now than ever before.

Any reconfiguration and overhaul of INS will require significant support from all quarters of the Executive and the Congress. We strongly recommend that the Department of Justice, the Administration, and the Congress collaborate to advance the evolution of INS into a more balanced, more efficient, and more service-oriented operation.

d. If nothing works, separate the functions into different agencies.

One of the reasons for creating an Executive Office for Immigration Review (EOIR) within the Department of Justice but separate from INS was to foster impartiality and fairness in immigration court proceedings. Perhaps, if the enforcement bias in INS cannot be tempered, then it may be time to separate the two functions into separate agencies within the Department of Justice, one responsible for law enforcement functions and the other responsible for inspections and examinations.

In addition to eliminating undue influence of the enforcement mission on the service functions, a separation between enforcement and service functions would allow the new INS to explore models in private industry where "putting customer service first" has many advocates and teachers.

Testimony of Theodore Ruthizer
March 30, 1993
page 13

CONCLUSION

The American Immigration Lawyers Association again commends the Chairman and the Subcommittee for openly examining the subject of INS management and allowing us to present our concerns and views.

Report Card on N-400 (Naturalization—Preliminary Hearing) Processing

A 0-60
Days until
Initial
Hearing
Baltimore
New Orleans
Pittsburgh

B 61-90
Days until
Initial
Hearing
Cincinnati
Cleveland
New York

C 91-120
Days until
Initial
Hearing
Houston
Portland, OR
St. Paul

D 121-180
Days until
Initial
Hearing
Dallas
Honolulu
Washington, DC

F 180+
Days until
Initial
Hearing
San Francisco
San Jose
Seattle

April 1993

District	Permanent Residence I-485	Naturalization		Employment Authorization		Notes
		Interview N-400(1)	Final Hearing N-400(2)	Non-Arlyum I-765(1)	Arlyum I-765(2)	
Albuquerque ¹	120	90	30	7	na	— ¹ indicates suboffice.
Baltimore	60	60	240	40	120	
Boston	na	na	na	na	na	
Chicago ¹	75	120	45	90	60	— I-485 shows # of days from filing until initial interview for permanent residence status.
Cincinnati ¹	120	140	45	1	90	
Cleveland	75	75	90	1	1	
Dallas	62	65	30	1	na	— N-400 (1) shows # of days from filing until initial interview on application for citizenship.
Denver	60	150	45	70	60	
Detroit	70	na	na	14	60	
El Paso	90	300	10	28	na	— N-400 (2) shows # of days from filing (non-arlyum/arlyum) to work authorization card issuance.
Hartford ¹	150	240	60	21	14	
Houston	na	na	na	na	na	
Indianapolis ¹	38	120	3	30	20	— I-765 (1/2) shows longest # of days from filing (non-arlyum/arlyum) to work authorization card issuance.
Jacksonville ¹	1	180	120	1	90	
Los Angeles	60	120	30	60	90	
Los Angeles	na	na	na	na	na	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
Los Angeles	160	270	90	1	90	
Los Angeles	330	120	180	90	120	
Miami	90	300	60	90	90	— AILA recognizes that many INS offices are lacking sufficient resources to process applications as expeditiously as they would like. We hope that these offices will be able to use this data to secure better funding for examinations functions.
Milwaukee ¹	190	300	30	1	120	
New Orleans	60	60	180	90	30	
New York	75	75	90	45	60	— INS offices are lacking sufficient resources to process applications as expeditiously as they would like. We hope that these offices will be able to use this data to secure better funding for examinations functions.
Newark	110	180	7	60	90	
Oklahoma City ¹	95	90	30	10	90	
Omaha	300	270	30	60	na	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
Orlando	330	210	90	30	90	
Philadelphia	120	240	45	1	90	
Pittsburgh ¹	120	60	30	1	1	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
Portland, OR	100	100	45	1	90	
Sacramento ¹	90	180	90	90	na	
Salt Lake City ¹	120	90	30	7	45	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
San Antonio	90	90	45	1	1	
San Diego	90	180	60	90	90	
San Francisco	150	365	120	1	60	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
San Jose	75	540	21	75	60	
San Juan	120	150	90	420	na	
Seattle	210	420	1	1	30	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
St. Louis ¹	140	150	150	1	1	
St. Paul	75	100	30	30	45	
Tampa ¹	90	210	90	30	90	— Statistics are reported by AILA chapters around the country and reflect average processing times as of March 7, 1993.
Washington DC	70	150	120	1	90	

Mr. CONDIT. Mr. Ruthizer, thank you very much.

You are talking about the balance between Enforcement and Service within the INS. Do you think we have reached the point where it might be appropriate to separate the two?

Mr. RUTHIZER. Yes, I do. I think that is not to say that enforcement has been adequately handled. I think that many of the criticisms that were leveled this morning—on the enforcements, are valid. But I think that there is an inherent conflict that cannot be reconciled by leaving both functions within the same agency.

It is interesting that, in my discussions with people who had spent many years within the Service and are now no longer within the Service—many have told me that they have reluctantly come to that view, given the history of that agency.

Mr. CONDIT. The inspector general also testified this morning that immigration law was complex—which I am sure we all would concur in—putting a strain on aliens who don't speak English. Is it possible to reform it, make it more simple? And would that be helpful if we attempted to do that?

Mr. RUTHIZER. Oh, I don't think that it is. There is a famous second circuit decision in which the court said that the immigration law was so complex that it was second only to the Tax Code in its complexity. I don't think that that is because the law is intentionally so. I think that is just the nature of the beast.

In fact, Congress rewrote the law just in 1990. Most of the changes just went into effect 1½ years ago. I don't think we want to revisit rewriting the law. I think we want to revisit how that law is administered.

Mr. CONDIT. OK. Mr. Wilson, you testified just a few minutes ago that the asylum program is inadequately staffed, and that contributes to the backlog. To beef up the staff or make any corrections, there is going to be a cost attached to that. Do you have any suggestions on how we go about coming up with the money?

The inspector general audit suggested a user fee account indicates that the INS did not charge as much as it should to cover the actual costs due to the lack of collecting good data. Do you have any feelings about that?

Mr. WILSON. I can't suggest, nor do I pretend to today, that the source for such revenues for an adequately functioning asylum program would come from those applicants for political asylum who come into the country. It is my experience that many, if not most, of those applicants arrive without any financial resources whatsoever and that we provide these services as a humanitarian gesture.

There are other sources of revenue. There are also modest fees which can be charged to the individuals who come into the process which many are able to pay. But I cannot suggest that that is an appropriate source of revenue and the recommendations of the American Bar Association do not suggest where those revenues would come from.

Mr. CONDIT. Sure. Well, I understand your point. Your point is if we can find a way, we ought to do it. If not, the services still ought to be available as a humanitarian effort; is that correct, pick up the money somewhere else.

Mr. WILSON. Exactly.

Mr. CONDIT. You also mentioned, in your testimony today—and I think it has been mentioned before—that the ABA has made some recommendations today and over the years, and they have not been received or not been implemented.

Can you tell me where the major stumbling blocks are for implementation of your recommendations, your association's recommendations?

Mr. WILSON. Well, I think you heard a number of recommendations that have been made over a number of years from a number of organizations. It seems that the INS has been remarkably unresponsive to the suggestions for reform. I can only observe that the recommendations have been made and that all of the opportunities are there for the Service to make the needed changes. But there seems to be an inertia, a resistance, a difficulty in accomplishing that. Part of it, I must say—having come into this field at a point 3 years ago myself at which we opened this new clinic to provide services for individuals seeking political asylum—was that the massive changes in the law, the regulations, the creation of a new corps of asylum officers put a good deal of pressure on the Service to create the offices, to staff them, to train the individuals, to provide facilities to process the numbers of asylum applications which come in each year.

I think there has simply—as one of the former commissioners said this morning—never been an opportunity not to be responding to an immediate crisis which requires that the Service head off in some new direction.

If the new Asylum Officer Corps could settle in and have the opportunity to continue to administer an adequately resourced program such as we suggest, the Asylum Officer Corps, which was just created 2 years ago—I believe they could do the job.

Mr. CONDIT. How long have you been involved in this particular issue, Mr. Wilson?

Mr. WILSON. I have been the director of this clinic for the past 3 years under a Federal grant. Prior to that time, I was a criminal defense lawyer.

Mr. CONDIT. Well, you were here, I believe, earlier.

Mr. WILSON. Yes, I was.

Mr. CONDIT. Did you hear Mr. McNary's comments about the improvements that have been made over there?

Mr. WILSON. I did.

Mr. CONDIT. What did you think of that?

Mr. WILSON. Well, I am here on behalf of the American Bar Association. I am not going to give my views about the Commissioner's recommendations without some specific question. And I think I would prefer to let the record speak for itself with regard to the association's recommendations.

Mr. CONDIT. Thanks for your answer. I appreciate that.

Mrs. Thurman.

Mrs. THURMAN. But you have taken all my questions.

Mr. Ruthizer, let us go back to the management issue then, because you mentioned one on the green card. And since we are trying to figure out how you don't make those same mistakes twice, do you have any suggestions to us as to why that decision was made and how we might avoid that in the future?

Mr. RUTHIZER. Yes, my understanding of how that decision was reached was that there was an internal debate within the headquarters office between enforcements and examinations, where enforcements said, "Well, we need this, because this will be a good security feature."

But Examinations was saying, "But who is going to do it? And if we do it, at what cost, because what is it then going to our ability to promptly adjudicate an employment authorization request, to issue green cards for people who have lost them and need them immediately, or to issue them for newly made permanent residents?"

And enforcements won that battle, and they forged ahead with this, and to what end?

I think part of it was a revenue-enhancing measure, to charge a relatively high fee of \$70 to just turn in and replace your card—no State charges that to get a new driver's license—and to force people to travel, in some cases, many hundreds of miles, including many elderly people, and those who are infirm.

It was just ill-conceived from the beginning. And at the American Immigration Lawyers Association—we have regular meetings with the Immigration Service—we told them it was ill-conceived.

And I think you are going to have to ask the people who actually made those decisions. But my take on it is that there was that kind of internal turf battle that resulted in the wrong decision being made, as it too often has in the past.

Mrs. THURMAN. Mr. Wilson, just maybe on the same lines—and based on your recommendations—is that the same kind of thing that you have seem as just not wanting to implement, not wanting to be helpful, or making bad management calls?

Mr. WILSON. My experience is much more limited, as I described. And within the past couple of years, during the period of time in which the new Asylum Corps has been created and has become operational, I think the Service has done its best to try to provide services with the backlogs that I have described.

That has resulted in some difficulties with regard to many of the clients of the clinic and many other individuals of whom I am aware who have gone through the asylum process. There are problems in the asylum process which are referred to in the written statement but the primary issue is the lack of resources to permit those asylum officers to perform their functions.

Mrs. THURMAN. Earlier, we heard testimony about the idea of it coming out of the Justice Department, being an independent agency. Do you have any—

Mr. RUTHIZER. Well, in response, I think Congressman Horn had suggested that Labor ought to take jurisdiction. I agree completely with former Commissioner McNary, that is the last agency you want to entrust Immigration, because they have a chunk of it now, and that is the Labor Certification Program, which they have completely bollixed up. That is, in my view, a very poorly run program. And you would have even a worse problem with the Immigration functions being considered a stepchild.

Similarly, I think to talk about having Customs take over the inspection process, that is not something that I would favor. It is a very complex legal decision as to whether to admit an individual to the United States—obviously not on an obvious case where

somebody is coming as a clear-cut visitor. But there are many, many gray areas which require very sound judgment, and I have no basis to believe that the Customs people would be the best ones to exercise that judgment.

I leave it to the wisdom of the subcommittee whether an independent executive branch agency is even feasible. Clearly, the Immigration Service has long been regarded as a stepchild within the Justice Department and within the administration as a whole, and some changes are needed.

I think it is probably more realistic, as former Commissioner Castillo suggested, to say, what can we do that is feasible over the next few years? And maybe that feasibility is limited to doing what was done with the Immigration courts, in which the Executive Office for Immigration Review was established as a separate subagency within the Justice Department, but separate and apart from INS. I think the same thing could be done for examinations and for enforcements.

And if you don't think that is necessary, then at least come up with a way to preserve the integrity and the efficiency and the importance of the examinations side, because one of the things that everyone had mentioned this morning was that, in a way, legal immigration gets short shrift, because everybody is terribly concerned about illegal immigration.

I don't want to diminish the concerns about illegal immigration to say that we have hundreds of thousands of people who play by the rules, who want to become permanent residents, who want to become citizens, companies that desperately want to bring very badly needed professionals and managers and executives to the United States. And those people—and we are talking about hundreds of thousands, if not over 1 million people on an annual basis—deserve to have prompt and fair adjudications. They shouldn't suffer because there is an illegal immigration problem.

Mr. WILSON. If I may augment my earlier answer, I do want to make clear that while I have spoken to the question of management and the operations within the asylum branch, that is not to say that that branch is not without its operational difficulties.

Ms. Yañez cited a major study also cited in our written testimony, which is forthcoming from the Harvard Law School this June, on the operation of that facility which has been preliminarily released. It does document a number of operational difficulties with regard to the process of consideration and review of asylum claims. So it is not without its faults. But with regard to operation and management, I think the primary issue is resources.

Mrs. THURMAN. Thank you.

Mr. CONDIT. Thank you.

Awhile ago you mentioned it took 90 to 120 days—

Mr. WILSON. Yes.

Mr. CONDIT [continuing]. On adjudication of asylum claims; is that right?

Mr. WILSON. On an affirmative claim, I think that is the—

Mr. CONDIT. That is the target?

Mr. WILSON. That is the target.

Mr. CONDIT. Do you happen to know what the average is?

Mr. WILSON. I can't give you exact figures. I believe you referred to a year-long process this morning.

Mr. CONDIT. I heard 14 months.

Mr. WILSON. It isn't—I don't think that is out of the ballpark. I think—my experience with my own clients is that more recent applications have been handled actually quite quickly. I had an applicant this past summer whose claim was filed during the summer, whose interview occurred quite timely, within 2 months, and whose decision came down last week, favorably. So it can happen. It does happen on some occasions.

Mr. RUTHIZER. Yes, I think what has happened is that the more recent cases are being treated earlier, and the ones that were filed several years ago, God knows when those—

Mr. WILSON. Those are the problem.

Mr. CONDIT. Does the location matter on how quick this is processed, adjudicated?

Mr. WILSON. It does. It does. Many of the regional centers are backed up. Many of the seven asylum offices are more backed up than others.

Mr. CONDIT. Is it just simply because they receive more applications, or is there an efficiency problem in one place and not another that you are aware of?

Mr. RUTHIZER. Well, I think it is probably because of the volume. I mean, what has happened is that until about 1 year ago, all of these cases were under the jurisdiction of the individual district directors. And there it depended on the good faith and the conscientiousness of each of those district directors. That power has been removed from them. They have now set up the separate asylum unit, and I think that there has been some movement since then.

With the chairman's permission, I would just like to add one further comment in the asylum context. There was plenty of discussion this morning about the so-called phony asylum seekers and the problem that that brings.

As of 1 year ago, there was a problem not only in New York but also out of Los Angeles, with people coming to LAX. Los Angeles started detaining those people, and the problem cleared up in Los Angeles. And I suggest that if the problem exists in New York, the INS ought to look to finding detention places. I understand they are available detention facilities—not necessarily in New York. Those cases can be put on an expedited track.

What I am saying is, is that there are a number of ways to remedy what is admittedly a problem without destroying the integrity of the asylum process.

Mr. CONDIT. I have some additional questions that I would like to submit to both of you in writing. And would that be OK with you?

Mr. RUTHIZER. That would be fine.

Mr. WILSON. Absolutely.

Mr. CONDIT. Without objection, we will submit them in writing to you.

[The information can be found in the appendix.]

Mr. CONDIT. Thank you very much for being here today.

Mr. RUTHIZER. Thank you for inviting us.

Mr. WILSON. My pleasure.

Mr. CONDIT. We appreciate your patience.

We will take the next panel, Ms. Muñoz and Mr. Stein.

You both have been here all day, and you understand that we have a practice of swearing in the witnesses.

[Witnesses sworn.]

Mr. CONDIT. Thank you. Please be seated.

Ms. Muñoz, we will start with you.

Ms. Muñoz is the senior immigration policy analyst for the National Council of La Raza.

STATEMENT OF CECILIA MUÑOZ, SENIOR IMMIGRATION POLICY ANALYST, NATIONAL COUNCIL OF LA RAZA

Ms. MUÑOZ. Thanks very much, Mr. Chairman.

I work for NCLR, which is the largest Hispanic constituency-based national organization, in the country. We have long been concerned with the fair implementation of immigration policy. We believe it should be generous to U.S.-based families who petition for their family members, and we believe that immigration enforcement is important and that it must be both effective and humane.

The problems with the INS are longstanding. To the extent that they affect any U.S. community, they probably affect the Latino community more than any other. And I say that despite the fact that nearly two-thirds of our community are not immigrants. We are native to the United States, and the bulk of our community are born in the United States.

But the INS affects all of us. It affects Latino U.S. citizens who petition for their family members, and the way that the INS handles itself has a profound effect on the rate at which Latinos choose to become citizens.

In addition, INS enforcement has had a terrible effect on civil and human rights of Latinos, U.S. citizens living in the border region. That is a historic problem. And I would like to cite just a quick example to illustrate just how prevalent this is.

At a conference held last month in El Paso, TX, an audience of U.S. citizens residing in El Paso were asked how many of them felt that they had been abused by the Border Patrol. Every hand in that room went up. This is a historic problem, it is a devastating problem for our community, and it is one which we believe can and must be resolved by the INS.

Based on the Latino experience with the Immigration Service, we have divided our concerns into two areas, which you have already heard a great deal about.

The first of them is the INS's ability to provide services effectively and efficiently without long waiting periods. And the second is their ability to enforce immigration laws effectively and professionally.

And we think there are serious problems in both of these areas. Probably underlying all of this is a financial problem, both the lack of resources to the Service and Enforcement functions and the lack of accountability for finances, which you have already heard a great deal about.

In the service arena, there are devastatingly long backlogs for important immigration benefits which are provided under the law, including naturalization. In many key INS districts, you wait over

1 year simply to have a basic application adjudicated for naturalization or family visa petitions. And again, family members wait long periods of time to reunite with their spouses, their children, and their parents; and there are long waiting periods for employment authorization documents.

Simple applications, as my colleagues on the previous panel pointed out, take much longer than they should. You shouldn't have to wait 8 months, for example, for a visa for your spouse when there is technically no waiting period for that visa. That 8 months is simply the time it takes for the INS to push the papers on your case.

Work-authorized immigrants, similarly, should not have to wait more than 90 days to get a document which proves that they are work authorized; these are people who need to support families. They can't do it without those documents. They are work authorized. They simply can't prove it until the INS gets the document to them.

There has been some discussion of the fact that the Immigration Service has turned to a fee system in order to pay for its services. We think that this is appropriate and legitimate. We believe that fees ought to pay for services. The problem is that it is not clear that the fees generated in the examination fees account are, in fact, used to provide services and to adjudicate applications.

In fact, there is clear evidence that the INS has reprogrammed funds from the examination fees account over to enforcement. INS has never been able to be clear about how it establishes its fees and where that money goes exactly. And yet in the last several years, INS has raised fees by as much as 100 percent in some cases.

We are talking about funds that are paid into the INS, again, by U.S. citizens and permanent residents, hard-working people to whom this money doesn't necessarily come easily. It is one thing to ask those people to pay so that their applications can be adjudicated quickly and efficiently. It is another thing to transfer those funds into Enforcement, while at the same time they are waiting very long periods of time to reunite with their family members. That is just simply an unacceptable situation, which has a profound effect on our community.

On the enforcement side, the National Council of La Raza believes that enforcement is a very critical part of INS's mission. The demands on INS Enforcement personnel are growing all the time. Their capacity to deal with it is not growing at the same rate. This is a very, very large police force, and it is probably one of the least professional police forces in this country, and it has an absolutely abysmal reputation in the U.S. Latino community.

In the last 6 months, representatives of the Border Patrol have met with my organization's president, Raul Yzaguirre, and have complained and asked for our support. They say that, in the interest of beefing up their apprehension numbers, they are told not to stand or present themselves in such a way as to provide a deterrent to people on the other side of the border who seek to come in, but rather to wait on this side of the border until they come in and then catch as many of them as possible, because that way they get better apprehension statistics.

That demoralizes the Border Patrol personnel. It is a poor choice of enforcement priorities. The fact that they feel obliged to complain to us and seek our assistance in remedying this kind of situation is appalling. It is simply less enforcement strategy on the part of the INS.

The Border Patrol personnel also complain that while most of them are very hard working, very dedicated people, there are occasional bad apples in the mix—I think that is very well known—and that when those bad apples are not dealt with, it affects the morale of the entire unit. They claim that morale is very, very low, and they believe it is important to address the bad apples when they appear, because that ultimately improves the efficiency and the standards of everyone on the force.

In order to be effective, the Border Patrol needs to be professional. We think that that means that they need to establish reasonable enforcement standards and stick to them and that there needs to be a review process. For the people who are abused right now there is no credible complaint process; there is no assurance that your complaints will be investigated.

There is a recent, I think compelling, example—again, in El Paso, TX—where the students and the faculty of Bowie High School, which is right on the border, took on the INS in court and won an injunction.

The court enjoined the INS from detaining and harassing, U.S. citizen and legal resident students, teenagers, as well as faculty, based on their Hispanic appearance and descent. We are talking about students who have been searched, students who have been beaten and chased on their way home from school.

The head football coach was stopped on the road, and a gun was pointed at his head by a Border Patrol officer. When the assistant football coach pulled up behind and explained to the Border Patrol officer, "You have got the head football coach from Bowie High School," then that assistant coach was also searched.

This is the kind of thing that should not happen. This is the kind of thing that you should be able to report if it does happen, and it should be addressed. This is the kind of thing that has literally gone on for decades in our community in the Southwestern United States. It does nothing for the credibility and effectiveness of the Border Patrol, and it simply must be addressed.

We would like to offer several recommendations to this committee, which we have also offered to your colleagues on the Immigration Subcommittee of the Judiciary Committee.

First, we believe that there needs to be an independent audit of INS finances. INS needs to be accountable for the dollars it brings in from the community. It needs to be accountable for all of the money that it both appropriated and generated through fees.

Second, we believe that a balance must be struck between service and enforcement. This has been a regular theme today. My organization has taken the position in the past that it is worth considering separating the agency into two agencies. That is not necessarily a cure-all, and I think we want to be very careful of portraying it as the solution to the INS's problems.

If you simply divide service and enforcement without looking at the resource questions, without looking at accountability, and with-

out making it a priority either in the Department of Justice or someplace else, it doesn't seem to me that you are going to solve all of the problems with the INS. Nor do we think that separating Service and Enforcement entirely will solve all of the problems.

We believe it is possible to keep the INS as one agency and still resolve a lot of its problems. But it takes attention, it takes commitment, and it is going to take resources. And we think those things need to be dedicated to the task.

Third, we believe that the INS must establish reasonable enforcement standards and follow them. Congress actually required INS to do this in the 1990 Immigration Act. The INS, rather than establishing new standards to go along with increased enforcement authority, simply reiterated its existing policies, which are clearly inadequate.

It doesn't necessarily take a lot to establish reasonable standards, to establish reasonable training procedures, and to establish a credible review process, yet the INS has refused to do this. We believe it should be done administratively.

We also believe that Congress must consider legislation to establish civilian review of Border Patrol abuse, and we understand that such legislation will be introduced next month by many of your colleagues. We would encourage you, as a subcommittee and as individuals, to take a look at that.

And if I may, I would like to close with an example on the asylum issue. I don't talk about it in my written statement, but it has been something of a theme here today. Several witnesses have discussed the question of individuals who come to the United States and enter, for example, at New York's airport without documents or with false documents.

An example that I have come across quite recently I think is very compelling and sheds a lot of light on this. This is a friend of my family's that I had lunch with 2 days ago who left her home country after her husband was executed. She was also on a list to be executed. She left with a 3-year-old daughter and pregnant with her second child. After her husband's execution, she was not in a position to go to her government and ask for legitimate travel documents.

People in this situation are forced to flee with forged documents. And I think it would be a grave injustice and a great tragedy if, in response to the World Trade Center bombing, for example, that we were to add to that tragedy the second tragedy of potentially excluding people who are eligible for asylum, who should be granted political asylum, and who we would literally be sending to their deaths by refusing them entry into the United States.

I thank you for considering these comments, and I look forward to any questions you may have.

[The prepared statement of Ms. Muñoz follows:]



TESTIMONY ON THE IMMIGRATION AND NATURALIZATION SERVICE

Submitted by:

Cecilia Muñoz
Senior Immigration Policy Analyst

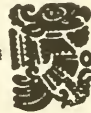
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Raul Yzaguirre, President

Before the

Subcommittee on Government Information, Justice, and Agriculture
Committee on Government Operations

March 30, 1993



I. INTRODUCTION

A. *The National Council of La Raza*

Good morning, Mr. Chairman and members of the Subcommittee. I am Cecilia Muñoz, Senior Immigration Policy Analyst for the National Council of La Raza (NCLR). NCLR is the nation's largest constituency-based national Hispanic organization and is dedicated to improving life opportunities for Hispanic Americans. It serves as an umbrella organization for over 150 affiliated Hispanic community-based organizations, which provide employment, education, health, housing, immigration and social services to over two million Hispanics annually in 38 states, the District of Columbia, and Puerto Rico.

NCLR has a long history of interest and involvement in immigration policy; Latinos represent both the first and the most recent immigrants to the United States. NCLR was very active in the debate which led to the enactment of the Immigration Reform and Control Act of 1986 (IRCA), and we have continuously monitored its implementation for the last seven years. More recently, NCLR represented the interests of Hispanics in the passage of the Immigration Act of 1990 (IMMACT), and has been actively involved in its implementation as well.

Given NCLR's concern for fair immigration policy, we are pleased to be able to testify before you today to discuss the current operations of the Immigration and Naturalization Service (INS). Latinos represent a large proportion of INS "clients," petitioners for the services which make up the last two thirds of the agency's title: naturalization, family immigrant petitions, and other family benefits. In addition, Hispanics represent the overwhelming majority of people at the receiving end of INS enforcement. The

agency's problems and its efforts to resolve them are therefore of tremendous importance to Latinos throughout the country. For this reason, we welcome the Committee's scrutiny of current INS operations, and appreciate the opportunity to offer NCLR's perspective this morning.

B. Overview of Principal Areas of Concern

The management and structure of the INS have been the subject of criticism and debate since at least 1973, when the General Accounting Office (GAO) issued the first in what became a series of reports concluding that the INS is one of the most mismanaged and beleaguered of federal agencies. This criticism has escalated over the last several years. In 1991, the GAO issued three reports critical of the overall management, financial management and data collection practices of the INS. In addition, reports by the Justice Department Inspector General, internal INS memos, and independent outside agency studies all confirm the findings of the GAO and reveal alarming administrative problems within the INS.

The management problems at INS most affect the Latino community in our contact with the service and enforcement functions of the INS. In the service arena, long backlogs characterize nearly every major process, including family visa petitions, work authorization documents and naturalization petitions. In addition, the failure of the INS to properly account for the establishment of fees for its services and the use of the examinations fees account to conduct speedy adjudications is a severe problem which greatly affects the confidence of the public in the agency. In the enforcement arena, the problems are equally severe. Recent reports from Americas Watch and the American Friends Service Committee,

as well as a report by the Office of Inspector General confirm the longstanding experience of the Hispanic community of unnecessary harassment and violence by the Border Patrol, which severely undermines the agency's credibility and its capacity to effectively enforce the U.S.-Mexico border.

II. SERVICE ISSUES

A. *Overview*

The service mission of the INS has been expanding rapidly during the last decade. The enactment of IRCA and the creation of the legalization program marked a milestone in which the INS took dramatic steps to differentiate its service function from its enforcement function, including establishing legalization offices which were separate from regular INS district offices. IMMACT also dramatically increased the nature and scope of INS services, by enacting substantial reforms in the naturalization process, expanding the number and availability of family visas, establishing a more generous Family Unity program for the families of legalized immigrants, and initiating the Temporary Protected Status program for nationals from El Salvador and other countries. In addition, dramatic and mostly welcome changes in the asylum adjudications process have expanded the INS' service mission, though serious concerns remain about the capacity of the INS to keep up with its expanding mission, and about the use of fees which are collected to provide these services.

B. Backlogs for Naturalization, Work Authorization, and Family Visa Petitions

In 1991, NCLR released an analysis, *Unlocking the Golden Door: Hispanics and the Citizenship Process*, which outlines the continuing problems in the naturalization process which particularly affect the Hispanic immigrant community. Several problems in the naturalization process itself, including lack of outreach, long processing times, and inconsistent application of testing requirements contribute to low naturalization rates for Hispanics. Since that report was issued, two major naturalization reforms have modified the process by dividing responsibilities for swearing-in ceremonies between the INS and the courts.

However, while these legislative reforms streamlined procedures for the ceremony at the end of the naturalization process, they did nothing to ease the most significant delays in the citizenship process, which occur at several INS district offices which often cannot adjudicate citizenship applications until over a year after they are submitted. While the new swearing-in process theoretically provides most would-be citizens with an INS or court ceremony within two months of having their application approved, the longest wait continues to be in the completion of the application process itself. In some major INS district offices, including San Francisco, San Jose, and Seattle, naturalization backlogs exceed one year.

In addition, although IMMACT authorized the INS to use funds to conduct outreach activities related to naturalization, there continues to be no significant outreach on the part of the INS to promote citizenship or to make the process more accessible to prospective new citizens. An outreach campaign can be conducted successfully at a low cost by working

cooperatively with community-based organizations which have an interest in promoting citizenship; however, the INS has not moved forward on these efforts.

Similarly, the INS continues to be plagued with problems in adjudicating petitions by U.S. families who are sponsoring close relatives, including spouses, children and parents. While Congress modestly increased the number of visas for some categories of family members, difficulties in processing the applications are increasing the length of time that family members must wait before they can reunite. Of these difficulties, NCLR is particularly concerned with delays in processing petitions for immediate relatives of U.S. citizens; this is the only category through which U.S. citizens can petition for "immediate" entry of spouses and children. Despite the fact that there is no waiting list for this category, some INS districts take nearly one year to process such cases. This causes unnecessary hardship to U.S. families, and directly defies the intent of the law.

Finally, INS is also chronically unable to speedily process applications for work authorization documents, which are vital to new Americans who cannot work without them. According to the American Immigration Lawyers Association, it takes over 90 days to process work authorization documents in key INS districts like Washington, D.C., Los Angeles, and Chicago. This means that tens of thousands of individuals who are legally authorized to work in the United States must wait over three months before they can obtain the documents which prove that they are so authorized, simply because of INS' inability to do the required paperwork. For the many immigrants and others authorized to work who are supporting families, this backlog is absolutely unacceptable.

C. *Financial Accountability Problems*

The severe backlogs for INS services are even more troubling to the Latino community when combined with the fact that INS fees for these services are increasing, while the quality of service is declining. In general, NCLR is prepared to accept fee increases for important INS programs, understanding that the INS must cover the cost of its services by charging fees; however, it has never been clear that the fees paid by our community reflect the actual cost of services. A recent lawsuit on the fees set by the INS for the Temporary Protected Status program has demonstrated that INS established a fee level which far exceeded the costs of the program. This incident, combined with consistently poor service by the INS and its chronic inability to account for the funds generated from immigrants, does little to increase our confidence in the examination fee system.

Furthermore, a year ago the INS requested that Congress approve a reprogramming of funds from the examinations fee account into the investigations account, and then move appropriated funds in exactly the same amount from investigations to enforcement. From the point of view of the Latino community, which pays a large portion of examination fees and receives the overwhelming majority of abuse by the border patrol, this transfer was outrageous and unacceptable. The INS reprogramming request underscored larger problems of management and accountability within the INS, and further undermined our confidence that the fees paid by hard working immigrants are being properly determined and used to speedily adjudicate their applications.

III. ENFORCEMENT ISSUES

A. *Overview*

Over 95% of those apprehended by the INS are persons of Hispanic origin. Therefore, any mismanagement or abuse in the area of enforcement is also of tremendous importance to the Hispanic community. Those affected include not just undocumented immigrants seeking to enter the U.S. but also Hispanic legal residents and U.S. citizens. Although NCLR does not condone or support illegal immigration, we are extremely concerned about the methods that the INS Border Patrol and Investigations Division often use to try to control the flow of people across our borders. Several recent reports, including a report by the union representing Border Patrol Personnel, and studies by the Office of the Inspector General (OIG), the American Friends Service Committee (AFSC), and Americas Watch underscore the problem.

B. *Enforcement Authority and Accountability*

The concerns reported by the National Border Patrol Council to President Clinton's Transition Team highlights some of the concerns of Border Patrol officers which affect the ability of the Border Patrol to effectively perform its mission. The report cites low staff morale, overworked and fatigued employees, lack of proper training and support, and poor enforcement priorities as problems which undermine the effectiveness of INS enforcement efforts. In NCLR's view, these concerns suggest that the Border Patrol, an enormous police force which has increasing demands placed upon it, has severe internal problems which

create a dangerous situation for both its own officers and the persons on the receiving end of its enforcement activities.

Reports by the American Friends Service Committee and Americas Watch document over one thousand incidents of abuse in immigration law enforcement over the last three years. These incidents involve verbal or psychological abuse, physical abuse, illegal or inappropriate searches, denial of due process, illegal or inappropriate seizures, and destruction of property. Of the incidents of abuse, 49.3% involved undocumented immigrants, and 47.5% involved U.S. citizens, legal U.S. residents, or persons with a legal passport or visa. While NCLR believes that violence and abuse are unjustified regardless of the victim's immigration status; we are particularly concerned about the extent to which the rights of Hispanic Americans are abused in the name of immigration control.

For example, a court in El Paso Texas recently enjoined the Border Patrol from harassing individuals solely because they look Hispanic. The action came after students and faculty at Bowie high school were harassed, beaten, detained and chased by Border Patrol agents simply because of their appearance and their Hispanic heritage. In addition, Border Patrol agents searched the assistant football coach without probable cause, and pointed a gun at the head football coach. These events are sadly typical of the Hispanic American experience with immigration law enforcement; such activities not only do nothing to control immigration, they undermine credibility and effectiveness of the entire enforcement process.

Hispanic community concerns with the Border Patrol intensified when Congress increased INS enforcement authority in 1990. Because of an increasing INS role in the "War on Drugs" and increasing tension in the border region, INS officials are more likely to be

carrying weapons, more likely to use them, and as a report by the OIG shows, more likely to misuse them. While NCLR has larger concerns about the wisdom of expanding INS enforcement authority in this way, to the extent that INS officers are authorized to carry firearms, such a policy should be accompanied by stringent policies and procedures, and some assurance that these procedures will be followed. IMMACT included provisions requiring INS to promulgate regulations which prescribe the types of force which can be used and who is authorized to use force, establish standards on enforcement, require training for any officer conducting arrests, and establish an expedited internal review process for violations of standards. In November 1992, INS issued a proposed rule which simply restates existing INS policy and falls far short of the statutory requirement in IMMACT. Despite the growing need and the Congressional mandate for reasonable enforcement procedures, the INS has chosen not to act.

A 1991 report by the OIG highlights and additional area in which INS enforcement needs improvement; the OIG found that INS personnel were not in compliance with some firearms policies and procedures, while other policies and procedures needed revision. The report concludes that some officers involved in shootings inappropriately used their firearms, discharged weapons accidentally, or were not qualified to use the weapon which they were indeed using. Moreover, the INS Firearms Board did not independently review a single shooting incident, nor was any disciplinary action considered in cases where INS firearms policy was violated.

Finally, though it has long been clear that there are serious problems with INS enforcement procedures which often infringe on the rights of Hispanic Americans living in

the Border Region, the Department of Justice lacks a credible mechanism for monitoring INS enforcement activities or investigating citizen complaints. The formal complaint process has serious implementation problems; and no national civilian monitoring structure exists. In one recent case, the City of El Paso recently acted independently to establish civilian review of INS abuse cases because the local perception is that monitoring by the Department of Justice is nonexistent. NCLR believes that a comprehensive, unbiased and reliable complaint process is absolutely essential if the U.S. is to begin to address the growing crisis at the border.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. *Conclusions*

The principal themes underlying the substantial problems in the service and enforcement functions of the INS are lack of resources and lack of accountability. As the responsibilities of the INS expand, due to new immigration legislation and increased emphasis on enforcement, the demands on the agency have increased enormously; clearly the INS has been unable to keep up with its expanding mission. NCLR believes that, ultimately, greater resources are needed if the INS is to reduce backlogs and waiting lists, administer its asylum process effectively and efficiently, and take on new and vital programs. However, such resources should not be provided until the INS demonstrates the capacity to account for them, and to show how both appropriated and fee-generated funds are used to provide services and adjudicate applications. To the extent that additional resources are needed to more effectively carry out INS enforcement activities -- and NCLR is on record as

supporting increased appropriations for border enforcement -- the record of the Border Patrol suggests an urgent need for resources and energy to be dedicated to extensive training and complaint review procedures.

B. Recommendations

NCLR believes that a number of immediate steps can help to address the principal problems at the INS:

- Commission an independent audit of INS finances - NCLR believes strongly that an independent audit is required to address the serious accountability problems within the INS financial structure. User and examination fees can and should pay for many INS services; however, they should be set at the minimum level which allows for timely processing of visa and other petitions, and not used to support other INS functions. Fees should not be increased or added to the INS structure until a system of accountability is in place which justifies the level of fees being set and indicates what they are paying for. In addition, the INS should place a high priority on the speedy adjudication of visa petitions, naturalization petitions, other family related benefits, and the issuance of Employment Authorization Documents. Other long-term programs of lesser importance, like the expensive program to replace valid green cards for some permanent residents, should be suspended until basic services can be provided efficiently.
- Strike a balance between service and enforcement - The problems at the INS are the product of a long history of undercutting the INS service function and placing a far greater emphasis on enforcement. Such an approach has always hindered the INS in efficiently providing immigration benefits authorized under the law; these problems are more evident as the number and scope of programs the INS must implement increases. Some recent initiatives by the INS, like improvements in the structure and training in the asylum unit, indicate that, with proper training and focus, it is possible to conduct adjudications without an enforcement bias. Such initiatives should be undertaken throughout the Examinations Unit at INS. In addition, modest initiatives to promote the Naturalization process in cooperation with community-based organizations can do a great deal to improve the quality and reputation of the service branches within INS, at very little cost.
- Develop appropriate standards for enforcement and a credible review system - If the U.S. is going to control its borders, the police force assigned to this important and difficult task must be professional and effective. The Border Patrol is a long way

from being the kind of police force which can effectively perform its mission without unnecessary and tragic abuse. Rather than ignore the Congressional mandate for regulations which establish appropriate standards, the INS must take seriously the longstanding poor relationship between the Border Patrol and the community and develop reasonable, credible training, enforcement and review procedures. In addition, Congress should enact legislation, expected to be introduced in April by members of the Congressional Hispanic Caucus, to create civilian review of border patrol abuse. Pending the passage of such legislation, the Department of Justice or the new INS Commissioner should establish such civilian review procedures administratively.

NCLR welcomes the Subcommittee's commitment to assessing the INS; we appreciate the opportunity to present this testimony before you today.

Mr. CONDIT. We thank you for being here.

Mr. Stein.

Mr. Stein is the executive director of the Federation for American Immigration Reform.

Mr. Stein.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR,
FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Mr. STEIN. Thank you, Mr. Chairman.

Mr. Chairman, my name is Dan Stein. I am with FAIR, and I am very happy to be here today. I applaud the chairman for his leadership in holding these hearings today on what is a humbly broad agenda of topics to be discussed.

I will be brief, because you have already taken a lot of very important testimony on a range of issues, and hopefully we can get to some good questions.

FAIR is the Nation's largest organization that deals exclusively with U.S. immigration policy. We are a nonprofit membership organization with about 50,000 members, many in California, working to try to stop illegal immigration and to reduce legal immigration to levels consistent with long-term national population stabilization.

Because of tremendous backlogs of several million and the profound technical and policy problems which have now formed in achieving these aforesaid goals, we have called for a comprehensive moratorium on most immigration—because progress has not been made in reforming key legal and administrative areas.

Mr. Chairman, there are three basic questions that concern all Americans about U.S. immigration policy.

How many? How many of the hundreds of millions of people worldwide who would like to move to a country like the United States can we reasonably accept annually?

Of that relative few, who are they going to be? What criteria are we going to use to select immigrants?

And then, most importantly, how do we enforce those rules? How do we deter illegal migration and enforce departure when those admitted temporarily are then required to go home?

FAIR's interest is in limiting immigration through effective international deterrence and the development of fair laws and policies that are administered in a nondiscriminatory manner. We are further concerned about the impact of immigration decisions on American society as a whole, both today and in the future. And this hearing has a bearing on all of those important questions.

As Ms. Yañez mentioned, in most of the less-developed world, we have witnessed the flight from rural to urban areas over the past two generations. Those living in the countryside are moving, voting with their feet in response to poor and declining living conditions.

Pushed from the countryside and pulled by the city's bright lights and economic opportunities, real or imagined, tens of millions have elected to crowd into teaming metropolitan areas. Mexico City, for example, with 3.5 million people as recently as 1950, now holds about 18 million.

What we have witnessed to date is only the tip of the iceberg. The U.N. estimates that between 1987 and 2025 the urban popu-

lation of the Third World—hopefully no longer “Third”—will have grown by 2.75 billion people, twice the amount that were added during the period 1950 to 1987.

Along with rapid urbanization, the population explosion in the less-developed world has resulted in vast—and I mean vast—labor force increases. The huge cohort born in the 1970's is only now entering the labor market, overwhelming the economies of many poorer nations.

The Third World labor force has increased by more than 500 million since 1975. By 2025, another 1.4 billion people will be seeking employment, a number more than double the present total labor force of the more developed world.

The great majority of these workers will be urban bound or urban based. And in country after country, urban unemployment and underemployment, already running high, will affect as much as half of the current labor force.

There are millions of new entrants every year, the products of rapid population growth from a generation earlier. Driven by rising expectations but facing plummeting prospects, great numbers have determined to take their chances and migrate, legally or illegally, to the developed countries.

At a time of growing migration pressure around the world, we must now face the reality that resource consumption and environmental considerations do limit the number of people that the United States can absorb.

Regrettably, unfortunately, U.S. immigration policy takes none of these factors into consideration. The laws originate in the two Judiciary Committees of the House and Senate, while executive policy originates generally in the executive department, in the Department of Justice.

Issues are decided politically, with each “group” coming to push for more visas for “its population of special concern.” Immigration numbers are constituent generated, rather than being fashioned as a part of a national population or labor policy.

Congress increases numbers without regard to their future impact on the Nation and certainly without regard to their likely impact on the Immigration Service. Two years ago, Congress enacted legislation that so increased immigration the Census Bureau recently had to adjust upward by nearly 100 million the size of the U.S. population projected for the year 2050.

Was the public at large consulted about the long-term impact of that change, adding more that 100 million people to U.S. population over the next 50-plus years? No.

Immigration policy affects a huge array of concerns: Aggregate size, growth, and fertility rates of U.S. population; population density in coastal counties; aggregate resource and energy consumption; particulate pollution; pressure on U.S. infrastructure; pressure on the U.S. labor market, particularly as we go through major structural changes; immigration's impact on basic educational availability; social and health care costs; and, yes, its impact on crime, both domestic and international.

Despite the growing strains on the INS and the Border Patrol, Congress reflects its own constant constituent pressure on the Service to expedite lawful traffic. Congress only moves reactively

when the integrity of inspections or adjudications comes into question after prominent criminal alien activity.

In guiding your deliberations on the question of how to look at the administrative functions of the Immigration Service, I just would like to remind you of these basic principles. It is much easier to deter people from coming illegally first than trying to remove them after they get here legally or illegally.

Many countries and geographic areas, like Hong Kong, have discovered that by sending an effective international message that illegal immigration will not be rewarded, either with permanent residence or protracted legal proceedings that give de facto permanent residence, you can deter most illegal migration. Surely Hong Kong, with an enormous problem, facing migration from the PRC—if Hong Kong can handle this problem through effective international deterrence, so can we.

Whatever you want to say about the Bush Kennebunkport order vis-a-vis Haiti, once he put that order in place in May 1992, people stopped coming out.

The same is true for enactment of employer sanctions in 1986; border apprehensions dropped three consecutive years. Still have not gotten up to the pre-1986 level, primarily as a result of the message that employer sanctions sent worldwide. The same thing is true for other changes which I could mention, but essentially it is important to understand that people respond worldwide based on the expectations of what they will get when they are here.

The second guiding principle is that the Immigration Service not only services immigrants, but it also serves the American people. And while the American people were busy with their daily affairs, they are suddenly discovering that the number of people who are either coming into the country or would like to come into the country has vastly expanded.

And as I mentioned, worldwide population pressure has put pressure on America's border infrastructure and Immigration Service in ways that most Americans, because they have no reason to be dealing with the Service, simply did not understand.

On the other hand, very powerful or well-funded pressure groups come to Congress demanding special preferences or programs for their special groups, and the INS and Congress are responsive to those concerns, as they ought to be in a democracy. But at the same time, what polls suggest, and what we know basically, is that the general public would like to see less immigration and the borders under better control.

We also know that our documentary system is in complete disarray. Because we do not have an effective national birth-death registry, we do not have an effective way for the Immigration Service or any Federal agency to easily determine false claims to U.S. citizenship. This has a bearing not only on the question of immigration enforcement; it also affects the ability of the States to verify whether or not someone making a claim to citizenship and claiming benefits is actually entitled to them.

It affects questions in the mode of voter gun control and national health care. We have to face squarely the question of establishment of a national birth-death registry and a U.S. citizenship index if we

are ever going to develop the kind of immigration documents that are going to bring this problem under effective regulation.

The administrative infrastructure—I have been working personally on this issue for nearly 15 years, and our organization has been working on it longer. One of the reasons why the Immigration Service does not have the administrative infrastructure to deal with this incredible volume of adjudications has to do with the fact that court decision after court decision has held, through collateral attacks in U.S. District Court, that additional procedural process is required for a greater and greater volume and category groups of aliens.

This has necessitated a great expansion in the resources required to handle this, the additional adjudications burden. There is never any assessment by U.S. district judges when they entertain these broad-based collateral attacks on INS regulations or proposed regulations, if the action is brought prospectively, on what the impact on INS Enforcement capacity will be.

And yet we have seen it over and over again—and most recently in the case of the CIA sniper and one of the individuals arrested in the World Trade Center—the abuse of the so-called SAW, special agriculture worker amnesty program, whose fraud rates were estimated to have been upwards of 80 percent. Three times the number of people who could have qualified under that program, if you had done a labor market analysis, actually had been beneficiaries. The enormous fraud associated with this program is a byproduct of the fact that both Congress and the courts have failed to understand the magnitude of the administrative burdens they are imposing on the Service when it puts these programs in place.

Another basic principle: Every time Congress or courts or any other individual or party, where it requires the Immigration Service to expand eligibility for permanent residence, the net effect is more work. This is because the first thing that aliens do when they get a green card, or if they become citizens through the naturalization process, is to run back to the Service and file more petitions on behalf of relatives.

For the Service, it is like shoveling snow in a blizzard. The faster you admit people for permanent residence, particularly from countries where there is an enormous income differential, the faster relatives get in line behind them to come in.

Another basic fact we have to consider is that there is noncooperation between State and local law enforcement officials. We are as supportive as any one group or organization can possibly be of California's valiant efforts to get its \$1.5 billion in reimbursement moneys.

But none of us can be blind to the fact that over the last 15 years we have heard from State and local officials in California that it is not the province of California to be concerned with immigration policy, that we should not have immigration officers or immigration State official service providers or anyone else helping the Federal Government cooperate in enforcing U.S. immigration laws. We have been told that immigrants are an untold benefit, financial and otherwise.

Many employers, in fact, use illegal immigrants—did use illegal immigrants through the 1980's in the service industry—to get wage

subsidies and profit. Now, we, the rest of us, are being told, nationwide, that we have to pony up the residual money to pay the extra costs.

The question always is, if immigrants are such a benefit to California, why should the rest of us pay for California's benefit?

Until State and local officials—not only in California but in most of the major immigrant-receiving States—express a willingness to cooperate with the Immigration Service in setting up programs to verify status and ensuring cooperation of the issuance of driver's licenses and other things, it seems basically unfair to ask the rest of the American people to help fund these programs. And we would encourage serious reconsideration of many of these so-called noncooperation resolutions.

Beyond that, I will simply say that we have a number of specific recommendations relating to INS automation, the fact that there really is a one-prong mission. The Immigration Service is, in fact—I know it is late—but, in fact, the Immigration Service does not have two functions. It has only one function, to ensure that only those persons may enter this country who are legally entitled to do so.

The second prong of this mission, mentioned above, to expedite lawful traffic, is merely a byproduct of the main mission, to screen out the majority of the world's population that is not entitled to enter this country. How quickly that can be accomplished determines in large part how quickly lawful traffic may move.

Border problems we discuss in some detail in our written statement, as we do questions of the border itself.

INS top management—we need professionalization. We need people who are not simply working on the campaign, but people who have some background in the subject.

We need to have, as Commissioner McNary said, an environmental impact study done.

National population policy—we need to get more people involved in the policy processes so that we can start recognizing the fact that immigration, just like all other issues, affects a full array of domestic policy considerations.

Expand policy and legislative jurisdiction in Congress. We need to improve State and local input so that service providers—schools, hospitals, and others in States like California and Texas—get more input into immigration and refugee policy.

Array of recommendations regarding improvements in document technology, better congressional oversight—I think I can count on one hand the number of oversight hearings that have been held in the last 25 years on immigration policy that have had as broad an agenda as this hearing has had today. And we think it is wonderful.

Modernize INS data systems, common knowledge about data systems, departure and entry forms, centralizing and bringing INS computer technology and data systems integration up into the 21st century.

We need better cooperation from Mexico in enforcing the border.

Innovative fundraising techniques—we have been pushing a border crossing user fee now for about 4 years and certainly in light

of NAFTA, that is an arguably excellent way to obtain the resources needed to improve border infrastructure.

Free trade does not imply unlimited immigration. In fact, free trade relies on mutual trust and respect, which is sometimes absent from our southern neighbor.

Maintain a unitary mission for the INS.

And permit reprogramming of user fees from beneficiary applications to enforcement functions, where it is needed and appropriate.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Stein follows:]

Testimony of Dan Stein
Executive Director
of the
Federation for American Immigration Reform
before the
Information, Justice, Transportation, and Agriculture Subcommittee
of the
House of Representatives Committee on Government Operations
March 30, 1993

TABLE OF CONTENTS

Enforcing the Rules	1
The Problem: Population Growth	2
International population growth and migration pressures place staggering administrative burdens on the INS.....	3
Why is there an INS?	4
The two-pronged mission is really one	5
The ever-growing workload at INS and poor planning	5
INS: The stepchild in automation	5
The Impact of law and policy on INS efficiency	6
Border problems	7
Some problems are political problems at INS	8
Congress and the law of unintended consequences	8
Why does the border leak so?	9
The role of employer sanctions	9
Recommendations for INS management	10
- Professionalize more of top management	10
- More resource impact studies	10
- Expand policy and legislative jurisdiction/more state/local policy input	10
- Documents improvements, etc.	11
- Improve congressional oversight and data systems	11
- Capture more information	11
- Decentralize all data input of nonimmigrant entries to place of admission/use machine- readers and scanning devices	12
- Obtain better cooperation with Mexico	12
- Use innovative revenue-raising techniques to fund border improvements	13
- Maintain unitary mission for INS, add user fees, implement key border security proposals	13
Conclusion	14

Mr. Chairman, members of the subcommittee, my name is Don Stein and I am executive director of the Federation for American Immigration Reform. FAIR is a national, non-profit membership organization, working to end illegal immigration and to reduce legal immigration to a level consistent with long-term national population stabilization and the national need.

Because of profound policy and technical problems in achieving the aforesaid goals, FAIR has recently called for a comprehensive moratorium on immigration until progress is made in key legal and administrative areas.

FAIR is pleased that the subcommittee is holding these hearings and has made an extensive effort to comment on critical issues relating to current Immigration and Naturalization Service (INS) organization and operations.

Mr. Chairman, there are three basic questions that concern all of U.S. immigration policy:

1) How many? How many, of the hundreds of millions of people who would wish to move to a country like the United States, can we realistically accept annually?

2) Who? What criteria do we use to select immigrants? Who do we admit?

3) How do we enforce the rules? How do we deter illegal migration, and enforce departure when those admitted temporarily are required to go home?

FAIR's interest is in limiting immigration through effective international deterrence, and the development of fair laws and policies that are administered in a non-discriminatory manner. We are further concerned about the impact of immigration policy decisions on American society as a whole, both today and in the future. This hearing has a bearing on all three of the aforesaid questions.

Enforcing the Rules

The third question, "How do we enforce the rules?", is basic. Unless we as a defined polity can enforce our laws, the other two questions really don't matter. Unfortunately, as all America now knows, our laws are illusory – routinely gimmicked and ignored.

We've all seen it on "60 Minutes." Americans can't pick up a newspaper or magazine these days without seeing something about immigration. One thing is certain, something is wrong – terribly wrong – with our immigration policy and the Immigration Service. Illegal immigrants pour into the country each day and each night. Immigration fraud and alien smuggling are commonplace in all 50 states. Violation of our immigration laws is an ever-growing phenomenon. Lines of people seeking immigration benefits at immigration offices around the country, and at U.S. consulates overseas, are endless while backlogs of unprocessed applications continue to expand.

But all these things are only the symptoms of a more serious problem. Today, I will identify this problem, and offer solutions.

The problem: Population growth

Rapid world population growth is placing untenable immigration pressures on the United States. In the world's less developed regions, this growth is accompanied by the development of modern communications and transportation technology. This facilitates international migration pressures unprecedented in human history.

And it will only get worse. The United Nations estimates that 90 million people are now added to the population of the planet each year. Within the next decade, more people will be added than there were in the entire world in 1800. Just two generations ago, global population was 2.5 billion. During 1993, we will reach the 5.5 billion mark, and the UN estimates that we will exceed 10 billion in the next century before population growth levels off.

This powerful demographic force will explode in an unprecedented wave of human migration in the 21st century as tens of millions of persons seek economic opportunity and escape from environmental disaster. The patterns have just begun to emerge and will grow with intensity in the decades to come.

In much of the less developed world, we have witnessed the flight from rural to urban areas over the past two generations. Those in the countryside are moving – voting with their feet – in response to poor and declining living conditions. Pushed from the countryside and pulled by the cities' bright lights and economic opportunities – real or imagined – tens of millions have elected to crowd into teeming metropolitan areas. Mexico City, for example, with 3.5 million people as recently as 1950, now holds around 18 million. What we have witnessed to date is only the tip of the iceberg. The UN estimates that between 1987 and 2025, the urban population of the Third World (hopefully no longer "Third"), will have grown by 2.75 billion people – twice the amount that were added during the period from 1950 to 1987.

Along with rapid urbanization, the population explosion in the less developed world has resulted in a vast labor force increase. The huge cohort born in the 1970s is only now entering the labor market, overwhelming the economies of many poorer nations. The Third World labor force has increased by more than 500 million since 1975. By 2025, another 1.4 billion people will be seeking employment, a number more than double the present total labor force of the more developed regions.

The great majority of these workers will be urban-based or urban-bound. In country after country, however, urban unemployment and underemployment already run high, affecting as much as half the labor force. Still, there are millions of new entrants each year, the products of rapid population growth from a generation earlier. Driven by rising expectations but facing plummeting prospects, great numbers have determined to take their chances and migrate, legally or illegally, to destinations in the more developed countries.

At a time of growing migration pressures around the world, we must now face the reality that resource consumption and environmental considerations limit the number of people the United States can absorb.

High unemployment and growing domestic pressures add to the stress and strains and forces the nagging question of why. The U.S. continues to admit more immigrants than all other nations on earth combined.

Regrettably, U.S. immigration policy takes none of these factors into consideration. The laws originate in the Judiciary Committees of the House and Senate, while executive policy is controlled by the Department of Justice. Issues are decided politically, with each "group" coming to push for more visas for "their population of special concern." Immigration numbers are constituent-generated, rather than being fashioned as part of a national population/labor policy. Congress increases numbers without regard to their future impact on the nation. Two years ago, Congress enacted legislation that so increased immigration the Census Bureau had to adjust upward by nearly 100 million the U.S. population projections for the year 2050.

Immigration policy affects a huge array of concerns:

- 1) U.S. population size, growth and fertility rates;
- 2) U.S. population density in America's coastal counties;
- 3) U.S. aggregate resource and energy consumption and particulate pollution;
- 4) Pressure on the U.S. infrastructure;
- 5) Its impact on the U.S. labor market;
- 6) Its impact on basic education, social and health services; and
- 7) Its impact on crime, both domestic and international.

Yet over and over again, Congress has enacted changes to our immigration laws without any real regard to any of these above factors.

International population growth and migration pressures place staggering administrative burdens on the INS

Sadly, this same lack of foresight or consideration applies to the administrative functions of the Immigration and Naturalization Service. Currently, nearly 21 million visitors pass through U.S. ports of entry. The number of border crossings and entries total nearly 500 million a year (294 million non-U.S. citizens).

Despite the growing strains on the INS and its Border Patrol, Congress reflects its own constant constituent pressure on the service to expedite lawful traffic. Congress only moves reactively when the integrity of inspections or adjudications comes into question after prominent criminal alien activity.

In that regard, there is always a fundamental tension between these two competing objectives: expediting lawful traffic and examining all the traffic to screen those not admissible. All who enter must be inspected by immigration officers for admissibility. They must (1) expedite lawful visitors and citizens, while (2) insuring those not-admissible are first identified, and then denied entry.

Moreover, those admitted on a temporary visa do not leave when the visas expire. Last year INS estimated that nearly 500,000 temporary visitors overstayed and did not leave. INS is without the capacity to routinely investigate overstays, or even monitor departures in any systematic way.

When Congress enacts laws containing amnesties or elaborate adjudications procedures that involve millions of people, no analysis is undertaken to estimate the operational impact such huge administrative undertakings require. This explains part of the problem. But the difficulties are more profound than that.

Why is there an Immigration and Naturalization Service?

The first thing we must do is examine the raison d'être of the Immigration and Naturalization Service. Perhaps some witnesses here today will try to convince you that the purpose of the INS is only one of facilitation of entry. INS is there solely to hold the door open, the wider the better, and to keep the queues moving straight, orderly and quickly.

This is wrong, Mr. Chairman. The general public goes to bed at night with the expectation that our borders are under control, that our entry inspections are effective, and that our government can protect the public safety. We have doubts that Congress intended INS to be an army of door-holders, nor do we think the American taxpayer should pay the costs if "door holding" were the agency's prime responsibility, or, indeed, any responsibility, at all. (If it were, then perhaps the travel and tourist industries could pick up most of the tab.)

On the books is a comprehensive set of immigration laws, all aimed toward a process of selection. Long ago the United States recognized that not every aspiring immigrant could be accommodated. Today, even under the best of circumstances, less than one-twentieth of one-percent of the world's population can be accepted into the U.S. for permanent residence.

Once the decision was made to place limits on numbers, there had to be some criteria for selection. Congress could have chosen any number of methods of selection, ranging from the very simple to the very complicated. For instance the method could have simply been first-come, first-served. Once a year's quota was filled, everyone would be turned away until next year's quota opened up. Instead, it evolved into something more complicated.

Since the demand for opportunity to immigrate was likely to be far greater than the supply of available slots, the problem developed of selecting from those who met specific criteria. Various schemes were tried, ranging from the long-repealed national origins quotas to today's mainly (nepotistic) family preference system. The point is, there is a law that says there are limits, how those limits are to be enforced and who qualifies within the confines of those limits. Everything the INS does as an agency is to be consistent in enforcing those limits.

(Note: We refer to the family preference system as nepotistic: it selects people based not on what they can do for the nation, but on who they know or are related to. Proponents of the system refer to it as "family reunification." It's no such thing. It is family "chain migration," creating immigration momentum that is self-promoting. The result? The more permanent residence visas the INS issues, the more related applicants get in line to enter the U.S.)

We need to operate from the assumption that there must be limits to the numbers of people who may settle. Because there are limits, and because the United States remains a desirable place to live (in part, because of those limits), we must also assume that millions of people will try to enter and exceed those limits.

The question is this: Should the same agency that is in charge of enforcing the limits also be the one that examines people for their right of entry? Can one agency enforce both aspects of the mission? Or is there an inherent tension that makes this impossible?

The mission of the INS seems very clear on paper. The agency owes its existence to the Immigration and Nationality Act (INA). This law says it will be enforced and administered by an agency which it prescribes. In the case of our immigration laws the INS is the primary enforcing agency. Other agencies involved include the Departments of State, Labor and Treasury.

The two-pronged mission is really one

Since we restrict immigration, the INS in fact has but one function: to ensure that only those persons may enter who legally are entitled to do so. The second prong of this mission mentioned above, to expedite lawful traffic, is merely a bi-product of the main mission, to screen out the majority of the world's population that is not entitled to enter. How quickly that can be accomplished determines, in large part, how quickly lawful traffic may move.

The ever-growing workload at INS and poor planning

For years the INS has faced an ever-growing and overwhelming workload. This is partly because Congress persistently underestimates the effects of changes in immigration dues.

In the early 1960s, then-Attorney General Robert Kennedy promised Congress that the bill which was later to be enacted as the Immigration Amendments of 1965 would not increase immigration significantly over the then rate of 250,000 annually. He was completely wrong. The law has produced steadily increasing immigration well over that number. In fact, in almost every case, the numbers predicted by a bill's sponsor prove to be underestimated.

Although there have been increases of resources to INS, those increases barely have covered the costs of inflation let alone the burgeoning workloads and caseloads.

Little of what is happening to the INS has happened by accident. This country's failure to develop a sensible immigration policy and the propensity of the Congress to make law on immigration without regard to the ultimate consequences are the main contributors. The piecemeal approach taken by Congress has produced mixed messages and conflicting signals that have weakened the enforcement structure and produced incompatible priorities. Computers are under-utilized at INS

INS: The stepchild in automation

Computerization is a modern tool that could make INS more productive and effective; and, while computers are now in use at INS, they are not used effectively. Several unintegrated computer systems exist wherein specialized narrow-task systems only serve one or two operational segments without communicating with systems that serve other segments. An alien can be in one system as scheduled for imminent deportation while another system carries the same alien as an adjustment to permanent immigrant status.

Another area where computers are being under-utilized is in tracking of nonimmigrant temporary visitors to this country. By obtaining data from airline booking and ticketing computers (something already being done) and feeding it into INS computers (not being done), the INS could produce machine-issued and machine readable travel documents for every visitor. A major benefit of this would be the fact that a computerized record would exist from the very moment a visitor enters the U.S. If there arises some reason to quantify or track certain nonimmigrants (as has happened in the past with Iranian and Libyan students), that information would be immediately accessible. Under current procedure, the documents are filled out by hand, usually by the aliens themselves. Many are undecipherable and are, therefore, useless for future reference. When they are entered into a computer system, it is done in batches by data transcribers whose pay and livelihoods depend on volume production. As a result, there is little accounting or monitoring of visitors we admit to this country.

The Impact of law and policy on INS efficiency.
Family preferences, political asylum.

Going back to at least the Immigration Act of 1965, Congress passed legislation that repealed the national origins quota, a relic of less sensitive times. Congress replaced it with the nepotistic preference system. But no matter the system, it is ripe for fraud. Two illustrative examples are marriage fraud and political asylum.

Because some of the family preference categories are numerically limited, backlogs develop. This produces a difficult situation: millions of people are placed in a long line anticipating future residence in the U.S. Given the fact that there are millions of would-be immigrants clamoring for their chances, opening the doors to related family members also has given rise to great opportunities for fraud. Since spouses of U.S. citizens get through the door the easiest, marriage fraud long ago reached epidemic proportions. Trying to stop marriage fraud is difficult. Marriage fraud requires an intrusive, probing analysis of the bona fides of an intimate relationship. It has caused the INS to dedicate an inordinate proportion of its resources to detecting this one area of fraud. After many years, Congress tried to remedy the marriage fraud by essentially making the marriage partners stay together for a couple of years. But because of pressure from the immigration bar, Congress has allowed a spousal abuse exception. Although spousal abuse can never be condoned, it will become a popular means of again bringing success to marriage fraud. The result: INS's administrative burdens are increased.

Then there is political asylum. No one can argue against the concept of asylum. It is only right that a nation such as ours offer refuge and protection to those who truly face persecution for their political or religious beliefs. But, as in the case of marriage fraud, asylum has become an avenue for malfeasance. Aliens who can find no other way now are making male fide claims of asylum in such great volumes that it is overwhelming the resources of the INS and Immigration courts. Last fiscal year more than 103,000 aliens requested asylum in the U.S. INS, even with a special asylum unit, was able to process less than 23,000 cases. Of those processed, over half did not show up for their interviews, just over 17% were approved and over 30% were denied.

Border problems

At our border with Mexico, Mexicans who are apprehended in violation of Immigration laws are merely returned across the border nearest where they are caught. Almost all keep trying until they are finally successful. As recently as the 1970s we had a policy of interior repatriation wherein, in cooperation with the Mexican government, apprehended aliens were returned by the U.S. taxpayer to the interior of Mexico near their homes. Somehow, through an analysis that defies analysis, policy makers both here and in Mexico became convinced that it was more effective to drop them off on the border thousands of miles from their own homes than to fly or bus them to a place much closer to home in the interior. Since it is the goal of every alien jumping the border to reside and, possibly, find work here in the U.S., mere return across the line breeds contempt for the law and encourages ever more violations. (It also preys on the morale of the valiant Border Patrol officer, who wonders, with justification, what the nightly cat and mouse game at the border is all about.)

North American Free Trade (NAFTA) negotiations could have been a crucial intervention point in improving border security. Mexico stands to gain from the proposed agreement at least as much as we do. But, unfortunately, the Bush administration removed border security from the agreement's negotiations.

Many econometric studies show that NAFTA will increase illegal immigration. Unfortunately, immigration was taboo in the NAFTA negotiations. FAIR has proposed a side agreement covering border security and infrastructure. To date, it has not been accepted. If not now, when? If not during the NAFTA negotiations, when will there be a better opportunity again?

Aliens attempting to fraudulently enter the country at our airports are put on hearing calendars months, even years in the future. The same is true of aliens who have gained entry and are arrested for immigration violations. Not only do their hearings take place years from the time they are apprehended, but the policy is to allow them to live and work in the U.S. while they are waiting. Failing to appear for court appearances buys them even more time. There is no penalty or adverse consequence for failing to appear, so it is part of the bag of tricks used to buy time which is very important.

The immigration bar contributes greatly to this state of affairs. While it can be argued that attorneys get paid by their clients to allow them to remain in the U.S. as long as possible, it is inexcusable that the loopholes that allow these tactics are kept on the books year after year. Not only do they tie the INS up in knots, they serve as an incentive to violate our immigration laws by giving comfort to violators through the appearance that the law does not really mean what it says.

If they finally do get their hearings, they can still delay their cases for years by filing procedural motions and appeals, even by belatedly asking for political asylum. While waiting for final decisions, aliens automatically get permission to continue to live and work in the U.S. Even a final decision requiring deportation does not usually mean they are required to immediately leave. If their cases can be delayed for seven years, they then can file for suspension of deportation which, if granted, wins them the ultimate prize for sustained, covert illegal behavior: Permanent

resident alien status. As cases near the seven year mark, the immigration attorney shows admirable acumen in queuing up a seemingly-unlimited supply of dilatory tricks.

Some problems are political problems at INS.

Internal political pressure at INS has sustained several politicized policies that encourage lawlessness. One such example is the Executive Order that allows Peoples Republic of China nationals to claim asylum from China's one child per family policy. Such a program is subject to extraordinary abuse. Around it has emerged a vast enterprise of smuggling Chinese aliens. Chinese are being brought to the U.S. by the thousands by every means imaginable. Almost all are paying \$30,000 and upward to smugglers to get here. The smugglers coach them to claim they are fleeing the one-baby policy which gains them work authorization and time to further pursue their claims. Of course few, if any, of the smuggled Chinese have the \$30,000, so most either get relatives to pay or indenture themselves for years to work in sweatshops under inhumane conditions. The smuggling rings are brutal organizations that do not hesitate to kill or maim those who try to flee their servitude or miss a payment.

To the uninitiated these various policies would seem to have little bearing on the efficiency and effectiveness of the INS. But they do. There is a clear cause-effect relationship, and no policy should ever be constructed without determining the potential impact on the operation of the agency. What has happened, though, is creation of policy without regard to operational effects. When things start going bad, even worse policy decisions are made to make cuts and take shortcuts to compensate by shuffling resources. As a result, it becomes easier for an alien to get away with fraud or illegal entry or some other immigration violation. So more and more try. As it becomes apparent that the chances of success are high, all the more try until we have what we have today--total breakdown of the system.

Congress and the law of unintended consequences

Congress has contributed mightily to this condition. Laws amending the Immigration and Nationality Act are passed without any consideration of what they will do to the INS's effectiveness. Even laws with which we at FAIR believe are essential for effective immigration law enforcement seem to have lacked the care they should have been given while under consideration. A good example of this is the part of the Anti-Drug Abuse Act of 1988 that requires the incarceration of aliens who fall within the "aggravated felon" category. This requirement very quickly caused most of the available alien detention space to be filled to capacity while the perpetrators resist deportation. Detention, always a discouragement to immigration violators became, for the most part, unavailable for use in "ordinary" deportation and exclusion cases. Now, aliens intent on violating immigration laws know the odds are very good that they will be set at liberty since detention space is so limited. They also are fully aware that INS cannot even demand of them any kind of surety bond since there is no detention alternative. Violating our immigration laws has become virtually risk free. Much of the reason is well-intended legislation that just did not go far enough.

A major congressional mistake was the Immigration Act of 1990, a much ballyhooed piece of legislation. It was supposed to cure all kinds of immigration problems. Now, less than three years later, it is apparent that many more problems are arising from it than it cured. First, it

increased legal immigration by 50% or more. That immediately meant that INS was going to have to handle at least 50% more applications. No provision was made to compensate for the extra workloads, so the INS, already sinking under immense backlogs of applications, had all the more piled on. In order to try to keep from going totally under, INS management reports informally that it is now cutting corners that should not be cut to try to stay ahead of the game. (And naturally, if the adjudications workload has been doubled or tripled, the applications approval rates will go up as the integrity of examinations go down.)

Every time a corner is cut it means a background check on an alien is being shortened or eliminated, or an alien is not being properly identified. As the bombing of the World Trade Center in New York illustrates, the American people can be placed in grave danger when we cut those kinds of corners. Our immigration laws and policies are extremely important—essential to the nation's security and the security of the American people.

Why does the border leak so?

The Border Patrol, the uniformed enforcement arm of the INS, has the responsibility of enforcing the immigration laws along almost 6,000 miles of land border, much of the Gulf Coast, and the sea coasts of southern Florida and Puerto Rico. Much of the territory it must cover is remote, rugged and unfriendly. Some areas of responsibility are densely populated, presenting their own dangers and challenges. This would be a daunting task for several military divisions, yet it is performed by a contingent of officers smaller than the Capitol Police force whose territory consists of just a few acres here in the middle of Washington.

The only way such a small force can possibly hope to fulfill its assignment is in maintaining a full complement of personnel, state of the art equipment and complete mobility. Yet the Border Patrol chronically suffers from shortages of personnel, technical equipment and serviceable vehicles. The shortages arise from both administrative management and congressional inattention. All too often funds appropriated for the Border Patrol are viewed by INS management as a tempting resource from which funds can be reprogrammed for non-Border Patrol activities. Congress, on the other hand, perennially authorizes sensible increases in personnel for the Border Patrol but never funds them. Add to it the policy of removing apprehended aliens only to the border, and the net result is a border that is totally out of control. Anyone who is persistent and patient enough can eventually successfully cross it illegally.

Allowing this situation to persist amounts to an unconditional surrender of our national sovereignty. We must secure our borders, and it can only be done by providing the Border Patrol with adequate personnel and resources.

The role of employer sanctions

An essential ingredient to bringing illegal immigration and other immigration violations under control is an effective employer sanctions law. A law is on the books that should be effective, but isn't. Why? Because of fraudulent documentation, now a common practice, to circumvent the law. Unless a tamper and fraud proof work document is put in place, there is no hope for ever bringing illegal immigration under control. The attraction of employment in the United States is just too great.

In addition to strengthening employer sanctions with a work document, Congress must address the overall management problems at INS. It should be immediately obvious that the INS suffers from a management continuity problem. Every time we get a new president, INS – like many other federal agencies – goes into a period of uncertainty and stagnation. The top tier of management is swept away, often to be replaced by greenhorns inexperienced in managing 12,000 to 13,000 officials world-wide.

Unfortunately, the INS Commissioner is often someone without experience in the area of immigration law or policy. Unlike EPA Administrator, or IRS Commissioner, where in-depth background in the field is a prerequisite to appointment, INS Commissioner usually has a "no experience necessary" component. This cannot continue.

No major operating law enforcement agency can thrive or even function this way. It has long been recognized that other Department of Justice sister agencies, the FBI, Drug Enforcement Agency and the Bureau of Prisons need continuity and professionalism of management to function well.

RECOMMENDATIONS for INS Management

– Professionalize more of top management.

Professionalize INS management and establish an extended term for the Commissioner. This would tend to de-politicize the INS and raise the competence of the agency much as it has done for the FBI, Bureau of Prisons and Drug Enforcement Agency.

– Require a resource impact study before more work is added.

Require a resource impact study be done before any immigration policy changes are made. Apply this standard both to administrative and legislative policy changes. If a policy is likely to increase applications, illegal entries, fraud or anything else that would require dedication of more resources or reprogramming of resources, it could not be put into effect until compensatory measures are taken to prevent resulting inefficiencies or ineffectiveness.

– Expand policy and legislative jurisdiction in Congress; improve state and local input.

The Judiciary committees should not have exclusive jurisdiction over immigration legislation. Changing policy so affects the operations of the agency, committees such as the Committee on Government Operations should have automatic jurisdiction over every piece of immigration legislation to measure its impact on the INS and its ability to function as an agency. Expand legislative jurisdiction at least to the committees having responsibility for overseeing government efficiency.

Another huge problem with immigration policy is that the people who make policy, the House and Senate lawyers on the Judiciary Committees, are not the ones who pick up the tab. Constitutionally, state and local governments may not make or enforce immigration policy, especially in any manner inconsistent with the federal regulatory scheme. Most financial costs for immigration fall on state and local taxpayers (housing, schools, hospitals, etc.), yet state and

local administrators get little input into long range immigration numbers and policies. This federal-state gap is one of the most egregious problems in immigration policy today.

— Improve U.S. documentation technologies, with a national birth-death registry, smart card technologies, and machine-readable verification devices. Consider a mandatory work authorization document for all workers, citizens and aliens alike, that can verify INS/Social Security numbers, and is interfaced with a national birth/death registry. Consider a fraud proof drivers license for the purpose.

Although it is not now perceived as being within its jurisdiction, this committee should demand strong and effective employer sanctions. Only by cutting off the job supply can there be any hope of success for the INS. Problems with perceived discrimination and employer hardship can be overcome through the use of highly counterfeit-resistant and tamper-resistant worker identification documents coupled with electronic verification systems and "smart card" technologies.

One other thing: there is now no effective way for the federal government to verify claims to U.S. citizenship. This is because all 50 states still maintain their own respective birth and death records. While some voluntary steps have been taken to link death records, the time has come to establish a national, federally-sponsored birth-death registry. This data base could be used to allow U.S. citizens, in conjunction with a machine-readable verification document, to verify their identification for a full array of purposes: immigration enforcement, national health care, social security, insurance claims, voter registration, personal finance card, or whatever other lawful applications the people may desire. Perhaps a uniform machine-readable drivers license would serve the initial purpose, with an under-age-sixteen ID document operating before then.

— Improve congressional oversight; Insure modernization of INS data systems.

Through diligent oversight, require the INS to modernize and maximize its computer systems. Require international airlines to share and transmit passenger data to INS so that accurate computerized records of all persons entering and departing the U.S. can be established and maintained.

In any major organization, particularly one with worldwide operations, a variety of complex goals and a large staff and budget, it is essential that there be effective communication systems, both down and up the hierarchy. Clearly a formalized decision-making network, based on a rational organizational structure, is necessary. Policies which have been adopted should be disseminated in a clearly routed fashion; conversely, there should be formalized input from the field upward to develop policy and report outcomes. INS needs a coherent, underlying management structure which then uses a state of the art communications technology — modern telephone systems, worldwide conference call capability, and videos, to name a few — to transfer information throughout.

— Capture information input by airport inspectors checking the computer lookout system as part of the data input for nonimmigrant entries.

— Decentralize all data input of nonimmigrant entries to the place of admission (ports of entry); use technology, such as bar-coding on the I-94 forms, so that cancellation can be accomplished by machine readers or scanning devices, avoiding additional keypunching when nonimmigrant cards are turned in at ports of entry.

In a democracy that respects individual rights and liberties, the problems of distinguishing between those who are or are not eligible for certain benefits is greatly aided by accurate and easily accessible information. There is always the tension between too much centralized information and no information at all. One system leads to excessive control, the other to unaccountability and chaos, neither of which is conducive to the rule of law or the success of a democracy.

Audits often suggest that some INS information and financial systems are antiquated, unreliable or nonexistent. We think this type of information can be easily collected and entered into automated systems. The same basic input systems could be used for tracking criminal aliens, deported aliens, alien benefit applications, fine and bond breach collections, general financial management and other matters. It would not take a highly sophisticated computer setup to both integrate and distribute data throughout the agency.

According to the September 1990 GAO report, **Information Management: INS Lacks Ready Access to Essential Data**, INS "maintains automated records on over 23 million aliens plus 30 million non-immigrant students and visitors" which, along with "management and programs data, are kept in over 120 information systems, ranging from large, complex, centrally-developed and maintained systems to small computer applications used in field offices. In addition, there are many individually developed manual information systems." Despite this repository of data the report states that INS has virtually no accurate data available to it in any category.

For example, the INS has little ability to track nonimmigrant entry and departure data effectively. Yet with a little reorganization and use of modern technology, this could be simply accomplished at time of entry. Now, airport inspectors on the spot punch into a computer system a name and identifying characteristics of entering persons as part of the inspection process. (This is done to check for known excludable aliens and persons "wanted" by various law enforcement agencies in the INS NAILS and Customs TECS "lookout" systems.) After the "look-out" system is queried, the information is dropped from the computer system and wasted.

In the case of alien admissions, the information keyed in could be used to produce a transaction record of every person inspected and at the same time produce a secure admission imprint on the I-94 form by electronically recording identity of aliens along with types and lengths of admission. The data collection and recording could all be done in one process at the time and place of inspection. This would replace today's system in which I-94 forms are collected from nonimmigrants and sent in batches to a contractor to be keypunched into a computer system at some distant location. Current delays put the entire system into a state of confusion. The United States never knows at any given time who has come, who has gone, or who has overstayed the time of admission.

— Obtain better cooperation from Mexico in controlling illegal entry along the Southern Border.

Members of this committee, please urge your colleagues in Congress to demand concessions and action on immigration from Mexico before any part of NAFTA is implemented. A minimum of acceptable concessions would include (1) a return of interior repatriation, perhaps funded, at least in part, by Mexico; (2) a pledge by Mexico to better secure its southern border against illegal immigration into that country; (3) a pledge by Mexico to otherwise vigorously enforce its immigration laws against persons transiting Mexico to ultimately enter the U.S.; (4) assistance from Mexico in the protection and maintenance of fences and other structures erected to prevent illegal immigration into the U.S.; and (5) full cooperation of Mexico in the prevention of criminal activities, including alien and contraband smuggling, along its border with the U.S.

Polls show that overwhelmingly, the American people want these improvements.

— **Use Innovative revenue-raising techniques to fund border improvements.**

Finally, we at FAIR recognize there are costs associated with doing an adequate job and we are in a time of deficit-cutting austerity. But control of our borders is essential not only to our national physical security but our fiscal security as well. It is unfair to ask all the taxpayers to bear the full burden of border security. In fairness, more of the burden should be borne by those who make use of border services, whether it be the occasional and casual border crosser or the commercial crosser who crosses often. FAIR recommends the establishment of a modest border crosser fee of no more than \$3.00 per crossing for land border crossers similar to the \$10 fee now paid by international air travellers. The proceeds would be dedicated to providing border services and security. Based on 1991 data such a fee could produce something in the neighborhood of a billion dollars for securing our borders.

— **Maintain a unitary mission for INS.**

— Improve application of law to both illegal immigration (see, e.g., Ten Steps to Securing America's Borders, FAIR, 1989), and legal immigration, and restate Congress' resolution that these twin missions are really one, inexorably related and interdependent.

— Permit reprogramming of user fees from beneficiary application to enforcement functions where needed and appropriate.

Management specialists sometimes recommend splitting the agency. We think that the attempt to split INS's organization and operations into enforcement and service functions misses the central point about U.S. immigration law.

U.S. law draws a distinction between legal and illegal immigrants. The primary purpose of the INS is to sort out persons in those two categories and act accordingly. Enforcement and inspection functions precede the next stages of processing. If alien entrants are not effectively controlled, then processing for both illegal entrants (detention and deportation) and legal entrants (inspections, examinations and naturalization) become impossible to manage. All INS functions are part of a whole, with one impacting another. If border controls and refugee/asylum law are applied poorly, then the numbers of aliens entering the United States soar, and the system is overloaded. If the processing function is not prompt and fair, the system backs up, frustrating legal immigrants and establishing incentives for more and more people to evade the law.

It is, therefore, an error to focus on inspection and examination delays and costs only; this diverts attention from the importance of effective departure and entry controls and related border security. The long-run effect is to exacerbate INS's growing overload condition. This, in turn, continues the trend that tilts the system in favor of the law-breaking rather than law-abiding immigrant.

In conclusion, immigration enforcement is not a hopeless cause. The INS is staffed with men and women who are highly dedicated, eager and anxious to do their jobs. Unfortunately, they are hamstrung and overwhelmed at the moment. Congress has it within its power to make the job do-able and to provide the resources. I ask you to seriously consider our recommendations which, if implemented, would bring the INS to a high level of efficiency and effectiveness.

Mr. Chairman, I again thank you for this opportunity to present FAIR's testimony. I would also like to offer any help or information from myself and our staff to assist you in your work on this issue.

Mr. CONDIT. Thank you, Mr. Stein.

I am going to defer to Mr. Horn.

Mr. HORN. Well, thank you, Mr. Chairman.

I have been tremendously impressed by your testimony. And it seems to me to be tightly reasoned, filled with facts, and you give us some excellent recommendations, which I think we will follow, some of them parallel parts of what others have said. But I want to commend you and your organization on the work they have done over the years to have a rational debate on immigration policy.

Unfortunately, in the 19th century, early part of the 20th century, we had an irrational debate on immigration policy. And you did have groups pitting one group after the other.

But I commend the Federation for American Immigration Reform for always sticking to the intellectual, rational issues of public policy and not the emotional pros and cons that a lot of groups get into.

So I have no questions with reference to your testimony.

Ms. Muñoz, I am sorry I couldn't be here to hear all of your testimony, but on the last part, I would simply like to know, in the example you cited, from what country had the woman come and fled?

Ms. MUÑOZ. My friend fled from Iran.

Mr. HORN. From Iran?

Ms. MUÑOZ. Yes.

Mr. HORN. Thank you very much.

Mr. CONDIT. I have just a couple of questions—the first one to Ms. Muñoz.

You mention the concern you had with the Border Patrol and encouraging people to come across, or at least when they met with your group that was the impression you got.

What is the answer to that? How do we stop that? How do we make the Border Patrol do what it is supposed to do?

Ms. MUÑOZ. I think there are a number of ways it can be done. The INS should have, within the last 2 years, issued regulations, according to Congress and the Immigration Act of 1990, establishing basic standards regarding, for example, the use of firearms, what their enforcement standards should be—when you use deadly force, when you don't use deadly force, for example—basic things which are really requirements for any police force, which the INS simply doesn't have on the books in an adequate way. There are simple administrative steps which Congress required the INS to do which it hasn't yet done.

I think, in addition to that, the Enforcement capacity of the INS was expanded in the 1990 act and yet the training to meet those needs hasn't expanded. The INS says the Border Patrol has been given an expanded mission, for example, in fighting the "war on drugs," and yet there hasn't been training which meets the needs of that expanding mission.

The INS can do basic things, establishment of standards, establishment of adequate training to improve professionalism of the Border Patrol. We believe that it would be useful to have some of the community groups who work on these issues involved in working with the INS, rather than as adversaries, as partners in figuring out how you enforce the border and do an effective job providing a deterrent without trampling on basic human and civil rights.

And again, we think there is also a legislative option, and that is to establish civilian review, which exists for many of the urban police forces in the United States. We believe that it is reasonable to establish civilian review of the Border Patrol as well, and then that can do a great deal to improve community confidence and the professionalism of the force.

Mr. CONDIT. I mentioned earlier this morning—I don't know if you were here or not—the news report about the drug trafficking network involved in the use of illegal aliens crossing the border from Central America and Mexico. Sometimes they get cash for being a courier.

In the face of this development, what advice do you have to the INS as to how to carry out its responsibilities, but also be fair to the Hispanic community and those people coming in?

Ms. MUÑOZ. What frightens me about involving the Border Patrol in drug enforcement is that the Border Patrol has got a pretty big job as it is. It is, as I think we could probably all agree, no easy task to enforce a border which is several thousand miles long; it is important to keep the Border Patrol focused on that central mission of acting as a deterrent to those who wish to cross the border.

The National Council of La Raza has always believed that it is more humane to act as a deterrent and prevent people from entering than to allow them to enter in large numbers and then be abused by employers and face potentially being rounded up and deported later on. That ought to be the central mission of the Border Patrol.

We are concerned that when you start deflecting their energies into other tasks, albeit important ones, it seems to me you dilute their capacity to do their job.

Mr. CONDIT. Mr. Stein, what do you think about that?

Mr. STEIN. There is a phenomenon now known as the "gray areas phenomenon" that seems to be emerging in international relations parlance of shadow sovereignties now being used not only to transship narcotics but also people. And smuggling of both drugs and people is becoming extraordinarily lucrative, not only through Central America but also through China and other overpopulated countries.

The Border Patrol has an impossible task. We have put together a report called "Ten Steps to Securing America's Borders," which goes over every inch of the southern border and reaches some basic conclusions about what is needed there.

The current policy of apprehending aliens, particularly Mexican nationals, and taking them right back to the border so they can try again is one which has evolved over time and one which ultimately doesn't succeed. Any individual who ultimately really wants to get across that border can.

So we have to really restrategize our whole effort along the southern border to centralize our resources where most of the crossings take place, reestablish with Mexico the concept of interior repatriation. We fly individuals back to near their home area so that there is some cost to coming. People who cross illegally more than once should have withdrawal of immigration benefits for some period of time. We need to put teeth into the process.

There is a whole array of things that can be done, but one of the reasons why there is abuse and crime along the border is because it is evolving into a state of lawlessness. Both Mexican bandits prey on people coming across through the canyons, and there is a genuine sense of frustration sometimes that takes place.

And the Border Patrol does an incredible job, considering how hamstrung they are with their resources and how difficult it is with many of the community organizations who oppose ideologically the existence of the border. It is amazing that they do as well as they do, considering how many hundreds of millions of people come across that border, legally and illegally, each year.

So until we begin to give the Border Patrol consistent support with a strong sense of mission orientation, we are going to have difficulties with confusing and mixed messages. We do not want to see the Border Patrol taken away from the Service or out of Justice, because we know that there is enormous—almost unanimity of support for drug interdiction.

And while we have certainly opposed the importation of illegal drugs, we do not want to see the Border Patrol politically pushed into focusing 95 percent of its energy on interdicting narcotics and 5 percent dealing with illegal crossing.

Mr. CONDIT. You mentioned NAFTA earlier. What is your position on NAFTA? Should INS be a part of NAFTA or not?

Mr. STEIN. A part of INS?

Mr. CONDIT. Yes.

Mr. STEIN. We strongly favor the negotiation of an additional side agreement, because whatever the effect of NAFTA may be, the implications seem to be that it is going to cause enormous dislocations in perishable crop industries in northern Mexico. And as another witness said, it is going to attract Mexicans up to some of this border development, as we have seen already from the maquiladora—I never pronounce that word right—program. People are lured up to the border.

That if, in fact, the econometric evidence is correct, that 700,000 or 1 million more illegal immigrants are likely to come across if NAFTA is ratified as proposed, then common sense would dictate that you need a side agreement to protect the American worker and to ensure that all crossings are legal.

Given NAFTA's impact on the U.S. worker, including Hispanic Americans, by the way, who stand to be enormously impacted by it, getting that border under control as a condition of NAFTA ratification would seem to be the sine qua non, along with some other side agreements, of, you know, an effective agreement.

Mr. CONDIT. Thank you, Mr. Stein.

Mrs. Thurman.

Mrs. THURMAN. No questions.

Mr. CONDIT. Mr. Horn, any additional questions?

Mr. HORN. No questions.

Mr. CONDIT. I do have some additional questions that I would like to be able to submit to you and have you respond to them if you would. Without objection.

[The information can be found in the appendix.]

Mr. CONDIT. OK. Thank you very much for being here today. You have both been very helpful, and we appreciate your patience and your waiting today. Thank you very much.

Mr. STEIN. Thank you, Mr. Chairman.

Ms. MUÑOZ. Thank you.

Mr. HORN. Could I ask you, Mr. Chairman—

Mr. CONDIT. Yes.

Mr. HORN [continuing]. I notice Supervisor Antonovich's statement in our briefing book. Is that being made part of this hearing record?

Mr. CONDIT. If you would like it to be part of the record.

Mr. HORN. I would like to have it in. I believe he notes that \$1.5 billion are spent in Los Angeles County alone on providing services for illegal immigrants.

Mr. CONDIT. Without objection.

Mr. HORN. That is the major county affected by this uncontrolled population.

Mr. CONDIT. Any objection?

[No response.]

Mr. CONDIT. No.

Mr. HORN. When the Governor came here, as you will recall, in February—

Mr. CONDIT. I remember.

Mr. HORN [continuing]. He said that the State—he put the figure at \$1.5 billion. And I think maybe if we could include his letter, which five Governors signed and met with President Clinton, it might be helpful. And I would be glad to introduce it into the record if you concur.

Mr. CONDIT. That is fine with me.

Without objection.

Did you have something?

Mrs. THURMAN. I just was—I don't have that, I don't believe.

Mr. HORN. It is in the—which item? The Antonovich statement is in the back of the briefing book here.

Mrs. THURMAN. Oh, I see, OK.

Mr. CONDIT. I think your side got that briefing book, and you didn't.

Mr. HORN. Pardon me. I am thinking 30 years ago, when one staff served everybody. And I see—

Mrs. THURMAN. So we don't have that?

Mr. CONDIT. Will you please share that with us, Mr. Horn?

Mr. HORN. Sure.

Mr. CONDIT. OK. We will submit that for the record.

[The prepared statement of Mr. Antonovich follows:]



Board of Supervisors County of Los Angeles

February 25, 1993

MICHAEL D. ANTONOVICH
SUPERVISOR FIFTH DISTRICT

The Honorable Craig Thomas
United States House of
Representatives
Washington, DC 20515-5001

Dear Congressman Thomas:

The enclosed report conducted by our Internal Services Department (ISD) focuses on the catastrophic \$1.5 billion impact illegal immigration is having on Los Angeles County. The attached chart and the executive summary clearly illustrate the economic devastation. You will find the figures staggering.

Los Angeles County taxpayers are spending over \$1.5 billion to provide services to illegal aliens and their children. Although the Congress appropriated State Legalization Impact Assistance Grant (SLIAG) funds under the Immigration Reform and Control Act (IRCA) of 1986, the funds earmarked for impacted states only provide for those aliens who were legalized under the 1986 amnesty program. It does not provide for those who are here illegally or for the majority of those who were intended to be covered by it.

Local government can no longer afford to pay these costs. If federal action is not taken, our neighborhoods will deteriorate into Third World communities. I have enclosed a list of recommendations which, if implemented, would reform our immigration policy and allow fair and legal immigration into this country.

Your direct support and action is necessary in ending this serious problem. Illegal immigration is an affront to those who wait patiently to immigrate to this country legally.

Thank you for your assistance in addressing this tremendous issue.

Sincerely,

MICHAEL D. ANTONOVICH
Supervisor, Fifth District

Attachments

lgl-lmg.mt

78-384

147

Costs

Criminal Justice System
\$135.7 Million
Contributing to Jail Overcrowding
and Court backlogs
(Criminal and Civil Included)

Health Care System
\$196.1 Million
Contributing to Hospital and Health
Centers Overcrowding

Education—Schools
Over \$1 Billion
All School Districts—Includes Undocu-
mented and Children of Undocumented
(Approx. 232,000 Children)

Social Services
\$400 Million
AFDC to Children of Undocumented
(Includes Federal and State)

of illegal Aliens on County Services

To resolve the problems of illegal immigration, I urge residents of Los Angeles County to contact their Congressional representatives to urge the immediate adoption of the following proposals:

- * Design tamper-proof green cards that cannot be counterfeited or forged.
- * Expedite the deportation of illegal alien criminals following the completion of their jail or prison terms.
- * Immediate deportation of illegal aliens when they are apprehended during illegal entry.
- * Increase the Border Patrol.
- * Establish a Border Patrol Reserve component.
- * Authorize National Guard forces to assist the Immigration and Naturalization Service.
- * Develop of a work-permit process to allow the legal entry of workers who are needed on a temporary or seasonal basis.
- * Reimburse by the federal government to the county for the public costs attributable to undocumented aliens.
- * Transfer illegal alien criminals from County facilities to federal detention facilities.

Mr. CONDIT. We do appreciate you folks being here today.

Mrs. THURMAN. Mr. Chairman.

Mr. CONDIT. Mrs. Thurman.

Mrs. THURMAN. I only bring that up because if we are going to start putting what dollar amounts and things out, we may want to provide something later on.

Mr. CONDIT. Well, we are open for——

Mrs. THURMAN. We are for it, absolutely.

Mr. HORN. Absolutely.

Mr. CONDIT. We are open.

Mr. HORN. Let us hold the record open so anybody that has impact can provide what studies——

Mr. CONDIT. We are open for 14 days, and you can submit whatever you want to submit for the record.

Is that all we have?

Thank you very much. Thank all of you for being here today. We appreciate it.

This meeting is adjourned.

[Whereupon, at 3:30 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Gary A. Cosentino, California, Chairman
Major Owens, New York
Kaver Thomas, Florida
Lynn Woolsey, California
(Vacancy)

Craig Thomas, Wyoming
Ranking Minority Member
Diana Row-Lattinon, Florida
Stephen Horn, California

ONE HUNDRED THIRD CONGRESS
Congress of the United States
House of Representatives
Information, Justice, Transportation, and Agriculture
Subcommittee
of the
Committee on Government Operations
B-349-C Rayburn House Office Building
Washington, DC 20515

(202) 225-3741

FAX (202) 225-2445

April 8, 1993

The Honorable Richard J. Hankinson
Inspector General
U.S. Department of Justice, Room 4706
Constitution between 9th and 10th Streets, N.W.
Washington, D.C. 20530

Dear Mr. Hankinson:

Thank you very much for your participation in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service (INS). The record of the hearing could be very helpful to the new administration in identifying necessary changes at INS and I greatly appreciate your help in developing the record.

As I mentioned during the hearing, I have additional questions for which I would appreciate receiving responses:

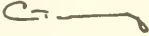
1. You identified personnel management as a major problem area: lack of training, inadequate screening of employees, lack of supervision, opportunities for corruption, and lack of discipline when there is employee misconduct. What advice do you have for addressing management problems in the area of personnel?
2. A common theme in audit reports is "lack of coordination" and "investigative overlap", both within INS and between INS and other agencies such as the Customs Service. Department of Justice components have a certain notoriety when it comes to cooperation and coordination, even within the Department of Justice. What can INS management do to insure coordination and elimination of overlap?
3. Ms. Munoz, representing the National Council of La Raza, raised concerns about the adequacy of handling of complaints about abuses by the Border Patrol. Your testimony indicates that individual allegations of physical abuse are treated as civil rights cases handled by the Criminal Section of the Civil Rights Division. Does your Office or the Office of Professional Responsibility have any responsibility in the handling of these complaints? If so, what is it?

4. Mr. Castillo, in his testimony, recommended that a trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visitors could finance the fund. If such a fund were established, do you have any suggestions regarding the most effective manner to establish and administer the fund?

5. Have you done any work relating to the process for deporting illegal aliens? If so, do you believe that the process can be improved? If so, how? If not, why not? Do you have any recommendations specific to the process of deporting criminal aliens?

Thank you for your assistance in this matter.

Sincerely,



Gary A. Condit
Chairman



U.S. Department of Justice

Office of the Inspector General

May 13, 1993

Washington, D.C. 20530

Honorable Gary A. Condit
Chairman, Subcommittee on Information,
Justice, Transportation, and Agriculture
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Again, I would like to thank you and the subcommittee for your interest in the Department of Justice and its components. Your hearing on the Immigration and Naturalization Service (INS) elicited a great deal of useful information and a diversity of views. I trust that it will advance future discussions of INS and its problems.

During the hearing, you asked that I respond to some additional questions that would be posed for the record. I agreed to do so, of course, and received them on April 20, 1993.

Before turning to those questions, however, I wanted to take this opportunity to add some observations regarding the remarks of Mr. Gene McNary, former Commissioner of INS. Although some of his remarks were directed specifically at my office, my intent is not to simply write a rebuttal. In fact, I think there is a kernel of truth in some of his remarks and a benefit to continuing the discussion that he began.

Mr. McNary criticized GAO for its "completely outdated testimony" and asserted that the OIG was "totally out of touch." There are several issues raised by this commentary.

First, IGs are not like news reporters. Our business is not about writing headlines—banners that become old news in two days and forgotten history in a week. As I told the subcommittee in my prepared remarks:

[T]hese reports are already a matter of public record;
to some extent, they are yesterday's news.^{1/}

(Emphasis added).

^{1/} Notwithstanding this comment, there were a number of "new" items discussed in my testimony: the December 1992 High Risk List, the comparison of INS and DOJ budgets and manpower (performed specifically for this hearing), the OIG study of INS corruption and integrity issues (not previously reported), and very recent audits such as the draft Data Base Access Controls, and Immigration Services and Special Benefits for Which Fees Have Not Been Established. This is work that cannot be dismissed as "old news."

Some managers feel that they can write off an audit or inspection because it is "yesterday's news." They choose to misread the headline. It is not that a problem has just been discovered. The headline is that the problem still has not been fixed. As examples, one of the problems--lack of training for part-time inspectors--was first reported by us in 1986. A second, involving INS' financial accounting system deficiencies, was reported at least as far back as 1989. There have been intervening reports since then that also identified the problem. Most recently in 1992, outside public accountants reported that they could not state an opinion regarding INS' fee accounts; many of the same conditions could also affect INS' overall accounting system. (We understand the accountants will not be able to offer a better opinion in the 1993 report.)

Second, some of the reports that were described in my prepared statement have probably been "closed," meaning that the auditee has agreed to adopt the auditors' recommended corrective action, and has provided evidence that the corrective action was implemented. Is it "fair" to include them as part of the litany of an agency's problems? Often it will be, because the problem--corrected in one iteration--resurfaces in subsequent reports and shows a pattern or tendency that merits greater concern than just one report might warrant. INS' problems with 1931 Act overtime and with security over the certificates, stamps, and ink used to document the granting of immigration benefits might be good examples of these recurring problems that we encounter.²

In short, I want to caution against dismissing an audit or inspection report as "old."

In another vein, Mr. McNary took issue with my statement that INS appears to suffer from an inferiority complex. But his prepared remarks seem to confirm, not refute, that observation. He complained:

- That "[m]ost Attorneys General . . . don't have the slightest interest [in INS.]"
- That INS serves as a resource for shifting INS funds to other components, and as a dumping ground for nonproductive employees.

² I must confess that the adequacy of the auditor's or inspector's recommendations is also implicated in this discussion. Thus, when an auditor notes confusion by field office personnel over a policy or procedure, the auditor will often recommend that headquarters issue a new directive to eliminate the confusion, and will insist that a copy of the new directive be furnished before the audit can be closed. The trouble with this narrow-gauged fix is that it will not reach the overall and continuing lack of policy direction and control on the part of headquarters that might exist.

- That INS has been "subordinated" to the rest of the Department's missions and goals.
- That INS is a "step-child."

Finally, Mr. McNary has been critical of the fact that part of the OIG's operations are paid for out of INS fee accounts. His description of the purpose and amount was a bit garbled, so I would like the record completed. Briefly, OIG gets \$5 million from INS user and examination fees. That sum pays for work investigators, auditors, and inspectors conduct in those programs. The premise is that the OIG provides a measure of supervision and internal control to the fee-supported programs and the INS employees who conduct them and, therefore, that it is proper to use fee account revenues to obtain that oversight and internal control.

For the record, this relationship was suggested by Congress.^{3/} The Attorney General acted on it, OMB and the Congress were notified, and the resources were reflected in an FY 1992 reprogramming notification and in the President's 1993 budget request. Both the House Appropriations Committee report and the Conference Committee statement were explicit in supporting the continuation of this arrangement in FY 1993. Since then, it has been reaffirmed by the Attorney General. It also has been audited by GAO.

Having said all that, let me turn to your supplemental questions.

1. You identified personnel management as a major problem area: lack of training, inadequate screening of employees, lack of supervision, opportunities for corruption, and lack of discipline when there is employee misconduct. What advice do you have for addressing management problems in the area of personnel?

^{3/} The FY 1992 Appropriations Conference Report requested a report by the Attorney General "on whether it is appropriate for fee accounts to provide some reimbursement to the IG to compensate for audit and inspection services." Conference Report on H.R. 2608, H.R. Rep. No. 233, 102d Cong., 1st Sess. (1991), reprinted in 137 Cong. Rec. H7165, H7170 (daily ed. Oct. 1, 1991).

The Conference Report emphasized that a broad, or liberal, construction was to be given to the reimbursement of OIG activities from these accounts.

The conferees have been made aware that a large portion of the Inspector General's workload revolves around the Immigration and Naturalization Service, particularly the examinations program. It was the intent of Congress that the full costs of adjudications and naturalization services be fully funded by fees.

Id. at H7170 (emphasis added).

These are all fundamental responsibilities that go with managing a work force. They should be done and they need to be done, and that is very simple advice. As I said during the hearing, however, I believe passionately in the value of training. I think that investment—one of the first to go when dollars get tight—is vital to improving INS' operations.

2. A common theme in audit reports is "lack of coordination" and "investigative overlap", both within INS and between INS and other agencies such as the Customs Service. Department of Justice components have a certain notoriety when it comes to cooperation and coordination, even within the Department of Justice. What can INS management do to insure coordination and elimination of overlap?

Our February 1989 Special Audit of the Immigration and Naturalization Service, pp. 23-25, noted a lack of clearly defined responsibilities and investigative overlap within INS. GAO's audit work contains similar findings. INS should concentrate on its internal coordination and overlap problems. I do not mean to suggest that external relations are less important; just that INS management has a better chance to achieve a tangible improvement if it concentrates on the in-house problems. Both INS, in its district operations, and the Border Patrol exercise law enforcement and investigative functions. I question whether the missions of the two entities are so different as to require this hybrid outcome. I understand, for example, that both operate Anti-Smuggling Units, that radio communications and fleet vehicle operations differ, and that the Border Patrol and INS maintain separate faculties at the FLETC training facility although they offer some of the same courses. In general, I would look to the possibility of revamping the functions of the Border Patrol, perhaps even transferring some investigative activities from INS district offices to the Border Patrol, as the most likely way to decrease overlap and coordination problems.

3. Ms. Munoz, representing the National Council of La Raza, raised concerns about the adequacy of handling of complaints about abuses by the Border Patrol. Your testimony indicates that individual allegations of physical abuse are treated as civil rights cases handled by the Criminal Section of the Civil Rights Division. Does your Office or the Office of Professional Responsibility have any responsibility in the handling of these complaints? If so, what is it?

Fundamentally, the Civil Rights Division of the Department of Justice screens the cases for possible prosecution and sends them to the FBI for investigation. Under the agreement that we had with Office of Professional Responsibility (OPR) regarding INS

investigations, and under the present Attorney General Order that divides investigative responsibility between OPR and OIG, we also look at the allegations, generally waiting until after the Civil Rights Division and FBI have considered or acted on the allegation. Our review is to assess whether the conduct might warrant consideration for possible disciplinary action against the employee. If such action appears possible, we will either investigate the matter ourselves and report to INS on the results, or send it back to INS for investigation and action as may be appropriate.

4. Mr. Castillo, in his testimony, recommended that a trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visitors could finance the fund. If such a fund were established, do you have any suggestions regarding the most effective manner to establish and administer the fund?

Mr. Castillo's comments simply did not provide enough information for me to form a clear picture of what was being proposed. I would not want to comment on this basis.

5. Have you done any work relating to the process for deporting illegal aliens? If so, do you believe that the process can be improved? If so, how? If not, why not? Do you have any recommendations specific to the process of deporting criminal aliens?

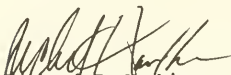
GAO deserves credit for doing most of the work in this area. I recommend that you consider several reviews by GAO:

- Immigration Control-Deporting and Excluding Aliens From the United States (October 1989)
- Criminal Aliens-Prison Deportation Hearings Include Opportunities to Contest Deportation (May 1990)
- Immigration Control-The Central Address File Needs to be More Accurate (January 1992).

As I mentioned during the hearing, my office is conducting an inspection of the Executive Office for Immigration Review Case Hearing Process, which will look at the processing of exclusion and deportation cases. One of the things that we found when we did the January 1993 inspection of Detention Facilities in the INS is a very strong interrelationship: by speeding up the hearing process, it is possible to cycle more detained persons through; this makes bed space available for other detainees, eases overcrowding of the detention facility, and, because there now is space available, gives the INS the option to detain rather than release the alien with dubious asylum claims.

I appreciate the opportunity to have appeared before your sub-committee and I hope that the answers to your additional questions for the record will be of assistance to you. Please do not hesitate to call me if I can be of further assistance.

Sincerely,



Richard D. Wilkinson
Inspector General

Gary A. Condit, California, Chairman
 Mervyn Dymally, New York
 Karm Thomas, Florida
 Lynn Woolsey, California
 (Vacancy)

Craig Thomas, Wyoming
 Ranking Minority Member
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April 8, 1993

Mr. Henry R. Wray
 Director
 Administration of Justice Issues
 U.S. General Accounting Office
 Washington, D.C.

Dear Mr. Wray:

Thank you very much for your participation in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service (INS). The record of the hearing could be very helpful to the new administration in identifying necessary changes at INS and I greatly appreciate your help in developing the record.

As I mentioned during the hearing, I have additional questions for which I would appreciate receiving responses:

1. The Inspector General of the Department of Justice raised a cautionary note about the realignment of INS functions saying that a lot of time could be wasted on reorganization efforts that should be spent on more basic improvements. What are your views on his statement, especially in light of the recommendation contained in your draft report, Customs Service and INS, that a legislative proposal ending the dual management of border inspections be submitted?
2. In the General Accounting Office report on INS' detention efforts, you point out that where aliens are apprehended, their nationality and where they are detained determines the length of their detention, if they are detained at all. Why does this occur?
3. Please explain why the Immigration and Naturalization Service cannot remove aliens who have no legal basis to remain here (and in particular aliens who have committed crimes) more quickly.

4. Your testimony indicated that the deportation component of immigration policy does not work well and must be improved. However, you also stated that it is tied to the issue of how much Congress wants the immigration laws to be enforced. Please describe the things that INS can do, without any "decisions" being made by Congress, to improve this process?

5. Do you have any recommendations for improvements in the process for deporting illegal aliens who have committed crimes?

6. INS' budget has grown dramatically over the last few years. What is your view regarding the size and growth of the budget? Are budgetary priorities properly set?

7. Your testimony emphasized the importance of the development of a "strategic vision" for the INS and the development of a consensus for support for this vision within the INS, the Congress and among affected groups. The specifics for doing this would be up to the Attorney General and the Commissioner. However, this will be a difficult task. What ideas do you have for how the Attorney General and the Commissioner could go about forging a national consensus?

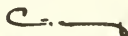
8. GAO's 1991 general management report characterized INS' control over revenues and expenditures as "deplorable". Can you provide a sense of the progress made by Justice in resolving this problem?

9. In 1991, the General Accounting Office reported that Border Patrol agents were spending less time in border control activities. For example, the time spent on border activities had declined from 55.9% in 1986 to 49.8% in 1990. In addition, the increase in non-border activities had led to the opening of offices in the interior. GAO concluded that as a "general rule, we think the Border Patrol should concentrate its efforts at the borders." Do you know what action was taken in response to this criticism?

10. Mr. Castillo, in his testimony, recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. If such a fund were established, do you have any recommendations regarding how it could be effectively implemented?

I look forward to receiving the responses to these questions.

Sincerely,



Gary A. Condit
Chairman

Responses to questions from INS Hearings:

1. The Inspector General of the Department of Justice raised a cautionary note about the realignment of INS functions saying that a lot of time could be wasted on reorganization efforts that should be spent on more basic improvements. What are your views on his statement, especially in light of the recommendation in your draft report, Customs Service and INS, that a legislative proposal ending the dual management of border inspections be submitted?

Answer: We agree with the Inspector General that many of the problems facing INS will not be resolved through reorganization. We continue to be concerned, however, that overlap and duplication exist in INS enforcement activities and that some organizational changes are needed. The long-standing and seemingly intractable problems with dual management of border inspections by INS and the Customs Service have convinced us that this is one area where a fundamental change in management structure is needed. Accordingly, we plan to recommend that Justice, Treasury, and OMB devise a solution which will end the current dual management structure.

2. In the General Accounting Office report on INS' detention efforts, you point out that where aliens are apprehended, their nationality and where they are detained determines the length of their detention, if they are detained at all. Why does this occur?

Answer: INS is confronted with millions of aliens who meet its criteria for detention; however, INS has limited space. As a result, local INS officials make detention decisions based on the availability of detention space at their localities as well as their evaluation of the aliens' likelihood of appearing for a hearing and their danger to society. Further, detention decisions are influenced by Justice policy regarding the certain nationalities. For example, Haitians generally are excluded while Cubans are not. As a result, INS is much more likely to detain Haitians than Cubans.

3. Please explain why the Immigration and Naturalization Service cannot remove aliens who have no legal basis to remain here (and in particular aliens who have committed crimes) more quickly.

Answer: Aliens, even those convicted of crimes and serving their sentences, are entitled to a hearing before an immigration judge to determine their deportability or excludability. During these hearings they can assert a number of legal theories in support of a request that they

not be removed from the country. For example, even if they have no legal basis to be in the country, they may claim amnesty. All legal claims must be fairly considered, and the process can take time. Also, even after a removal decision has been reached, INS has to obtain authorization from the alien's country before it can return the alien.

4. Your testimony indicated that the deportation component of immigration policy does not work well and must be improved. However, you also stated that it is tied to the issue of how much Congress wants the immigration laws to be enforced. Please describe the things that INS can do, without any "decisions" being made by Congress to improve this process.

Answer: For those aliens who do not appear for their hearing, after being notified, a warrant should be issued so that if they are ever stopped the arresting officer would have cause to hold them. With respect to criminal aliens, expansion of the institutional hearing program would enable INS to remove those aliens from the country immediately upon completion of their sentences.

5. Do you have any recommendations for improvements in the process for deporting illegal aliens who have committed crimes?

Answer: The expansion of the institutional hearing program would enable INS to remove those aliens from the country after they completed their sentences rather than having to detain them or possibly let the state or federal government release them.

6. INS' budget has grown dramatically over the last few years. What is your view regarding the size and growth of the budget? Are budgetary priorities properly set?

Answer: INS' responsibilities have expanded significantly in recent years. For example, it has to enforce employer sanctions and respond to a dramatically growing legal and illegal alien population requiring more resources. However, it is difficult to judge the adequacy of the INS budget given the agency's need to manage the resources it now has much more efficiently and effectively. Many of these problems are described in our management reports. Further, we believe it will be difficult to assess INS' budgetary priorities until the agency develops a comprehensive strategic management framework. This is discussed further in response to you next question.

7. Your testimony emphasized the importance of a "strategic vision" for the INS and the development of a consensus to support this vision within the INS, the Congress and among

affected groups. The specifics for doing this would be up to the Attorney General and the Commissioner. However, this could be a very difficult task. What ideas do you have for how it could be done?

Answer: As we noted in our management report, INS' vision should be part of an overall strategic management framework including stronger planning, improved communication, and strengthened accountability. INS leadership, working with the Attorney General and other stakeholders in INS policy, must identify what INS' priorities are. INS leadership then must develop a plan to carry out those priorities and an organizational structure that facilitates implementation. As it is now, INS has no overall plan that interrelates its various activities. As a result, various INS functions overlap. The problems of multiple enforcement units carrying out similar functions is a key example of this. INS has taken some steps to begin to develop a strategic management framework using Total Quality Management principles, but much more must be done.

8. GAO's 1991 general management report characterized INS' control over revenues and expenditures as "deplorable". Can you provide a sense of the progress made by Justice in resolving the problem?

Answer: Some of the most egregious problems have been addressed. INS no longer sends its cash deposits through the mail. INS also deposits these fees in a more timely fashion. We had identified stacks of applications with checks and cash attached that were not being processed for several weeks. On a broader basis, INS has prepared a strategic financial management plan, established a position of Associate Commissioner for Management with oversight responsibility for financial management, and is implementing Justice's Financial Management Information System. However, more needs to be done to improve financial management at INS.

9. In 1991, the General Accounting Office reported that Border Patrol agents were spending less time in border patrol activities. For example, the time spent on border patrol activities had declined from 55.9% in 1986 to 49.8% in 1990. In addition, the increase in non-border patrol activities had led to the opening of offices in the interior. GAO concluded that as a "general rule, we think the Border Patrol should concentrate its efforts at the borders." Do you know what action was taken in response to this criticism?

Answer: To the best of our knowledge, INS has not closed its interior Border Patrol stations and has not reduced the

its non-border patrol activities.

10. Mr. Castillo, in his testimony, recommended that a social trust fund be established to assist state and local governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. If such a fund were established, do you have any recommendations regarding how it could be effectively implemented?

Answer: User fees ordinarily do not exceed the cost or value of the benefits conferred on those paying the fee. Therefore, it is not clear how a user fee imposed on non-immigrants would generate revenue to finance costs associated with immigration. If such a fee could be devised, however, INS' administrative collection costs should be offset. The remainder might then be paid to the states under a formula based on their estimated alien population--both legal and illegal--since both result in cost to the state and local governments.

Gary A. Condit, California, Chairman
 Mayor Owens, New York
 Karen Thurman, Florida
 Lynn Woolsey, California
 (Vacancy)

Craig Thomas, Wyoming
 Ranking Minority Member
 Donna Ros-Lichten, Florida
 Stephen Horn, California

ONE HUNDRED THIRD CONGRESS

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April 8, 1992

Ms. Linda Yanez
 Harvard Law School
 Immigration Clinic
 432 Columbia Street #16
 Cambridge, Massachusetts 02141

Dear Ms. Yanez:

Thank you for participating in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service. The record of the hearing could be very useful to the new administration in identifying necessary changes at INS, and I greatly appreciate your help.

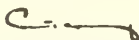
As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

1. Sanctions against employers who knowingly hire illegal workers have been in effect since 1987, but this remains one of the most frequently criticized areas of immigration policy. Some say the problem is the law itself, others say the INS has placed too much emphasis on prosecutions rather than information and compliance. What's your opinion with regard to this issue? And what steps should we take to correct the situation?
2. The processes for immigration are very paperwork and manpower intensive. Other agencies confronted with these problems have turned to technological solutions, but INS seems reluctant to do so. Why is that and what do you think should be done in that regard?
3. How do you feel about the use of pre-inspections or pre-clearance policies as a way to reduce the number of people who enter the US under false pretenses and then claim political asylum? Do the potential benefits of implementing such programs outweigh the costs?
4. County and state jails in certain states such as California have a relatively high percentage of illegal aliens who have been imprisoned for committing felonies. In your opinion, what should be done to alleviate the costs associated with illegal criminal aliens?
5. Do you believe that the deportation process for criminal illegal aliens can be improved or changed? If so, how? If not, why not?

6. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in the areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What, if anything, do think needs to be done at the federal level? Do you believe the lack of federal financial assistance contributes, either indirectly or directly, to ethnic tensions within communities?
7. In his testimony, Mr. Castillo recommended that a social trust fund be established to assist state and local governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visitors could finance the fund. What do you think of such an idea?

Thank you for your cooperation. If you have any questions about these questions, please feel free to contact Joe Shoemaker of the Subcommittee staff at (202) 225-3741.

Sincerely,



Gary A. Condit
Chairman

Gary A. Cline, California, Chairman
 Major Owens, New York
 Karen Thurman, Florida
 Lynn Woolsey, California
 (Vacancy)

Craig Thomas, Wyoming
 Ranking Member
 Dennis R. Kucinich, Florida
 Stephen Horn, California

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April 8, 1992

Mr. Leonel Castillo
 Former Commissioner,
 Immigration and Naturalization Service
 3320 S. McGregor Street
 Houston, Texas 77021

Dear Mr. Castillo:

Thank you for participating in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service. The record of the hearing could be very useful to the new administration in identifying necessary changes at INS, and I greatly appreciate your help.

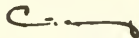
As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

1. You strongly advocate the use of pre-inspections or pre-clearance policies as a way to reduce the number of people who enter the US under false pretenses and then claim political asylum. Tell us how that process works and why you feel its important?
2. You talk in your testimony about "full and rapid assimilation" programs both here and abroad that would teach civics, language proficiency and other skills to those immigrating to the US. How exactly would those programs work and how much do you estimate a program like that would cost?
3. When you were Commissioner INS had a more decentralized system of responsibility; some went so far as to suggest INS regions were tantamount to independent fiefdoms. Today we have a more centralized set up. If distributive structures don't work well and centralized structures don't work well; what will work?
4. In your tenure as Commissioner, you dealt with massive influx of Vietnamese boat people. Today we are faced with a similar influx of Haitians. What advice do you have for current immigration policy makers regarding that issue?
5. Factors such as legalization, increased legal immigration, sanctions and a higher demand for citizenship place a great deal of pressure on the INS examinations program. Despite the utilization of user fees to make up for the increased demand for services, backlogs are have tripled in the last few years. Why is this and what can we do to improve things?

6. When you were Commissioner, I understand you occasionally made unannounced visits to INS field service centers, stood in line, filled out the forms and went through the procedures required of immigrants. That's an unusual style of management. Did you find it effective and would you recommend it to the new Commissioner?
7. You remain the only Hispanic ever to head the INS. How do feel the agency does with regard to promoting minorities to upper levels of management?
8. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in the areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What, if anything, do think needs to be done at the federal level? Do you believe the lack of federal financial assistance contributes, either indirectly or directly, to ethnic tensions within communities?
9. County and state jails in certain states such as California have a relatively high percentage of illegal aliens who have been imprisoned for committing felonies. In your opinion, what should be done to alleviate the costs associated with illegal criminal aliens?
10. Do you believe that the deportation process for criminal illegal aliens can be improved or changed? If so, how? If not, why not?

Thank you for your cooperation. If you have any questions about these questions, please feel free to contact Joe Shoemaker of the Subcommittee staff at (202) 225-3741.

Sincerely,



Gary A. Condit
Chairman

Gary A. Condit, California, Chairman
 Major Owens, New York
 Karen Thurman, Florida
 Lynn Woolsey, California
 (Vacancy)

Chris Thomas, Wyoming
 Ranking Minority Member
 Dennis Ross-Lebrun, Florida
 Stephen Horn, California

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FAX (202) 225-2445

April 8, 1992

Mr. Gene McNary
 Former Commissioner,
 Immigration and Naturalization Service
 1087 Pensive Lane
 Great Falls, Virginia 22066

Dear Mr. McNary:

Thank you for participating in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service. The record of the hearing could be very useful to the new administration in identifying necessary changes at INS, and I greatly appreciate your help.

As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

1. In your testimony you pointed out that as Commissioner, you presided over a number of policy and management changes at INS. You criticized the testimony presented by GAO as being "completely outdated" and stated that "we've [the INS] addressed every point they [GAO] raised in that study." Accurate information is important to the work of this subcommittee and I want to better understand your criticisms. The following questions ask for specific answers to each of the areas covered in the GAO report which you referred to in our hearing.
 - A. The GAO identified the need for financial and budgeting reforms. They reported that the INS could not determine how much each of its units spend. They recommended that the Attorney General establish a group of top experts from other federal agencies and the private sector to work with the INS Commissioner to design and implement an effective financial management system by the end of 1991. To date, those charged with reviewing the agency report some progress (especially in the area of budgeting) still say the problems are remain acute. What steps did you take to insure development and implementation of a sound financial management system? And why do auditors still identify INS financial management systems as problematic?
 - B. A second area identified by GAO was the need for better work force and resource planning. They reported that the INS needed to articulate component responsibilities and provide a clear sense of purpose and coordination among the different components. GAO recommended an enforcement strategy delineating the responsibilities of the Border Patrol and Investigations Division to eliminate unnecessary

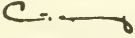
program overlap. Problems at INS detention facilities needed to be addressed by increasing the number of detention officers and augmenting physical security. GAO observed that even though INS had enhanced its revenues through increases in user fees, it continued to have "service delivery problems". What steps did you take to insure better work force and resource planning? And why do others still say progress needs to be made in these areas?

- C. A third problem area identified by GAO was information management. They reported that INS' actions in this area had been "shortsighted and piecemeal". The study voiced the need for leadership in long-term planning, and for systems that would provide information that was better integrated with other federal agencies and more usable by INS field personnel. Most evaluators have told the subcommittee that the progress which has been made in this area was done so at the insistence of other agencies (Customs, State Department, etc.) and that INS was not a leader in this process. How do respond? And what evidence do we have that demonstrates the progress INS has made in these areas?
 - D. A fourth area criticized by GAO, called strategic direction, involved "reconfiguring the organizational structure to strengthen accountability." They recommended that the Attorney General needed to establish a "clear vision of how INS is to operate". This would include establishing priorities, deciding where resources should be allocated, and insuring that people were trained for their jobs. At hearings held by the Judiciary Committee's Immigration Subcommittee, GAO reported that INS had begun to implement some of GAO's recommendations, but generally believed that much remains to be done. The "Justice Issues" Transition report prepared by the General Accounting Office for the new Administration contains a section which states that "management problems within Justice's Immigration and Naturalization Service [still] need to be resolved." How do respond? What specific evidence can you cite that demonstrates progress made in this critically important area?
2. Sanctions against employers who knowingly hire illegal workers have been in effect since 1987, but attorneys tell us the law is full of loopholes, and illegal immigration hasn't declined as it was expected. Some say the problem is the law itself, others say the INS has placed too much emphasis on prosecutions rather than information and compliance. What is your opinion?
 3. Border security is one of the issues at the heart of the immigration discussion today. While Commissioner, you significantly increased the size of the Border Patrol, but that seemed to have little effect on illegal entry (especially from Mexico and Central America). In your opinion, how big does the Border Patrol need to be? And what other steps do we need to take to insure secure borders?
 4. Under your stewardship, INS functions were greatly centralized; that is to say all field offices and all Border Patrol sectors reported to a single individual. Did you find that kind of massive centralization detrimental or helpful to policy implementation? Why?
 5. Do you believe that the deportation process for criminal illegal aliens can be improved or changed? If so, how? If not, why not?

6. County and state jails in certain states such as California have a relatively high percentage of illegal aliens who have been imprisoned for committing felonies. In your opinion, what should be done to alleviate the costs associated with illegal criminal aliens?

Thank you for your cooperation. If you have any questions about these questions, please feel free to contact Joe Shoemaker of the Subcommittee staff at (202) 225-3741.

Sincerely,



Gary A. Condit
Chairman

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April 8, 1993

Mr. Theodore Ruthizer
 President
 American Immigration Lawyers Association
 1400 I Street, #1200
 Washington, D.C. 20005

Dear Mr. Ruthizer:

Thank you very much for your participation in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service (INS). The record of the hearing could be very helpful to the new administration in identifying necessary changes at INS and I greatly appreciate your help.

As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses to these questions:

1. You recommend that INS should "consult with the consuming public more often and engage the public more frequently in problem solving." Could you provide more details about how this should be done?
2. How can INS involve the public without running the risk of slowing down the reform process?
3. INS has been criticized for inaccuracies in the information it maintains. From your perspective, what impact does inaccurate information have on the efficiency of proceedings?
4. Last year, the Immigration Lawyers Association raised concerns about the fact that INS does not track or exercise any control over released detainees and recommended that there be a parole-like system to permit the release of individuals on bond. Would the adoption of such a proposal help alleviate some of the problems which face INS? If so, please describe what would be required to implement the proposal.
5. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of

criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly?

6. Mr. Castillo recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. What do you think of his idea?

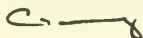
7. County and state jails in certain states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?

8. Should changes be made in the process for deporting illegal aliens? If so, how should the process be changed?

9. Do you have any suggestions for improving the process for deporting illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.

Thank you for your assistance in this matter.

Sincerely,



Gary Condit
Chairman



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April 29, 1993

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The Honorable Gary Condit
Information, Justice, Transportation,
and Agriculture Subcommittee
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you again for the opportunity to appear before the Subcommittee to discuss the operations and management of the Immigration and Naturalization Service. My Association welcomes the Subcommittee's active interest in the INS.

This letter is to respond to your request for additional remarks. For clarity's sake, I will address your questions sequentially.

1. You recommend that INS should "consult with the consuming public more often and engage the public more frequently in problem solving." Could you provide more details about how this should be done?

There are concrete ways in which the INS could consult with the public in a regular and meaningful fashion.

First, we strongly recommend the establishment of on-going "focus groups" -- informal task forces comprised of agency representatives and members of the consuming public that would brainstorm to resolve nagging issues and the particular problems that both sides share. The INS experimented with this on one occasion, meeting with community groups in major cities. Unfortunately, while the meetings showed some promise, the INS never repeated them.

Second, the INS should designate a liaison officer of sufficient stature and authority (with sufficient support staff) to act as an "ombudsman" to whom the public could bring complaints -- and have them answered or resolved. Too often, it is painfully unclear where to bring problems, and there is a persistent, nagging sense that problems are lost in the machinery. An ombudsman-type position would ensure that there is an identifiable source of information and resolution and bridge the bureaucratic mote that keeps the public in limbo.

AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

April 29, 1993

page 2

Third, the INS should make it standard operating procedure to consult with the organized immigration bar and other members of the public before implementing new policy, and should not wait until after policy-making is finalized. When the INS identifies substantive problems, whether in the law or implementation, the current practice is to exhaust all the administrative channels for analysis -- internally within the INS, through the Department of Justice, through the Office of Management and Budget -- and then publish regulations or field instructions in final form. Inevitably (and with remarkable regularity), this agency myopia leads to implementation problems that could have been avoided had the INS brought the public into the process. Clearly, if the public were consulted in the early stages, the INS would benefit from the "field insights" that its customers have to offer. (In fact, this is roughly the arrangement that Service Center operations uses -- informal, off-the-record, no risk consultations for the improvement of services. It has made a significant difference.) The INS should affirmatively solicit public input and share draft solutions -- before implementing new policy or new programs.

2. How can INS involve the public without running the risk of slowing down the reform process?

Public input does not impede, but accelerates positive reform. When the public is not consulted, the INS has to learn from mistakes it needs not make, and both agency resources and time savings are lost in the inefficient process of "promulgate first and ask questions later."

The O and P nonimmigrant regulations are a fine example of this practice. When the Immigration Act of 1990 created new nonimmigrant classifications for performing artists and athletes, the INS barely consulted the general public and moved forward with unworkable regulations. The frustration and outrage over the regulations was so pronounced that Congress had to intervene with corrective legislation in 1991, which resulted in another round of painful and protracted rulemaking. While the final regulations appear to be workable, the fact remains that the INS' failure to consult the public resulted in new laws and new regulations and a law that took needless extra months to put into place.

Not only is failed implementation costly from an administrative standpoint, but it is also expensive. The INS expends precious resources on litigation with a public that had been ignored until the end. Since the INS has a practice of ignoring the public in the rulemaking and policy-making process, the public has little recourse but to bring suit to address harmful or unlawful regulations and policies. Clearly, the incentive to litigate is spurred by the INS' resistance to open

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

April 29, 1993
page 3

dialogue with the public, and reform would be more prompt and less costly if the INS would tap into the willing resources of the interested public.

If the INS expends a little effort at the beginning of the process to include the public, reform will take place much more quickly.

3. INS has been criticized for inaccuracies in the information it maintains. From your perspective, what impact does inaccurate information have on the efficiency of proceedings?

We observe a profound impact on not only the efficiency of proceedings, but also on their efficacy and fairness.

INS' inability to maintain accurate, up-to-date information creates a domino effect of wrongs. First, because files are lost and addresses are misrecorded, hearings are scheduled which cannot take place and interviews are missed for lack of sufficient notice. We hear of many cases where an alien appears for a scheduled adjudication and all of the administrative machinery has run, just to have the adjudication cancelled because INS cannot locate the proper file. While this sort of mistake is bound to happen occasionally, it occurs all too often to be dismissed as statistical error. Similarly, there are many cases in which the alien does not show up for an adjudication or interview, which results in either a rescheduling or another adjudication on why the alien did not appear, because INS did not properly maintain name and address information and proper notice did not reach the alien. This is expensive.

Second, because information is inaccessible to the public, more work is created for the public and the agency alike. Between INS' propensity for losing files and its inability to provide status reports on case progress, duplicative applications and petitions are filed quite regularly. In some locations, it frequently happens that an INS contact will tell an applicant that his or her application is lost and to refile, only to have the file reemerge later. (Three applications for the same benefit are not unheard of.) Since INS is not equipped to catch "duplicates," both (or all three) applications get processed. The duplication is also expensive.

Third, weaknesses in INS' information management attract tragic error for persons in removal proceedings. Our immigration laws are extremely strict toward persons who miss an adjudication (absences can only be excused by severe illness or death of a close family member), and notice sent to a wrong address or to a wrong name could result in unfortunate circumstances in the wrongful removal of persons eligible to remain here. Whatever

April 29, 1993
page 4

risk there may be, it would be directly related to information mismanagement by INS.

Finally, poor information management has a subtle but profound impact on the public's confidence in INS. INS fiscal management has, rightfully, been under increasing scrutiny in recent years: fees are raised; services never improve; and backlogs persist. When INS handles information poorly, and the public can observe firsthand the waste, the public can only conclude that their fee monies and tax dollars are being spent to maintain agency inefficiencies. INS' credibility is extremely compromised by its inability to manage information.

4. Last year, the Immigration Lawyers Association raised concerns about the fact that INS does not track or exercise any control over released detainees and recommended that there be a parole-like system to permit the release of individuals on bond. Would the adoption of such a proposal help alleviate some of the problems which face INS? If so, describe what would be required to implement the proposal.

Clearly, we believe that this proposal would alleviate certain administrative problems for INS.

If INS were to establish a release program under its Detention and Deportation function, it could dramatically reduce its need for detention resources. Many persons being detained by INS do not require the imprisonment of detention. Few persons detained by INS pose a threat to public safety; for many, their only alleged crime is being undocumented. The real question with many detainees then is whether they will abscond.

Obviously, not every detainee poses a threat of absconding, and it is not economical for INS to operate as if they do. There are existing models for parole-like release that could be tailored to fit this population. For example, INS could establish a system whereby a released alien must periodically make contact with a monitor or face serious immigration consequences. That system could enlist nongovernmental organizations which will be accountable for the monitoring and will report failures directly to INS. The cost of such a program would be nominal compared to the expense of unnecessary and protracted detention.

We would recommend that a public and private sector task force be established to entertain proposals for a "NGO-sponsored" release program and to make recommendations to the Department of Justice.

5. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

April 29, 1993
page 5

particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly.

This inquiry is outside our field of expertise, and we are not prepared to address it.

6. Mr. Castillo recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to nonimmigrant visits could finance the fund. What do you think of his idea?

Although social trust funds are similarly outside of our field of expertise, we have heard experts discuss an "immigrant" (as opposed to "immigration") policy that addresses such assimilation issues as absorption, naturalization, and the local impact of immigration. Given their importance, we believe that a healthy, non-xenophobic examination of these issues would be beneficial, which would include an assessment of the trust fund proposal.

7. County and state jails in states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?

If this statement is accurate, the question remains an inquiry more of criminal law policy than of immigration law, and we are not fully prepared to respond to it.

However, we would point out that, as a practical matter, early release and deportation of alien felons would result in an appreciable reduction in prison costs, while we are far from convinced that full-term incarceration has any meaningful deterrent effect. The Subcommittee may want to consider this point as it examines the issue.

8. Should changes be made in the process for deporting illegal aliens? If so, how should the process be changed?

As it is currently administered, the process for deporting undocumented aliens is fair neither to the public nor the alien.

First, the process is not fair to the public because

April 29, 1993

page 6

resources are slow and cumbersome. The current immigration court system suffers from interminable backlogs and delays due to immigration court inefficiencies. Cases are left in limbo for weeks, months, and even years before a hearing is held and sometimes even after (while a decision is pending). Transcripts take forever to be produced; interpreters are poorly matched with respondents. The end result is self-perpetuating inefficiency and administrative waste.

Since backlogs generate more backlogs, both INS and the Executive Office for Immigration Review (EOIR) should implement procedural devices that would accelerate review. One immediate example would be for INS to give its trial attorneys more discretion to settle cases. Many aliens who do not deserve deportation could quickly be removed from the queue, thereby allowing INS' and EOIR's to dedicate their resources to the cases that require and warrant more attention, if trial attorneys had some measure of discretion.

Another measure would be to increase the number of adequately trained immigration judges, even temporarily, who could help alleviate the backlogs that currently exist.

Second, the process is also not fair to the alien. The current deportation process is riddled with significant problems arising from unnecessary obstacles to filings, to the lack of meaningful adjudicatory standards and standards of immigration judge conduct, to the overbroad discretion of immigration judges and the Board of Immigration Appeals (BIA). There are several ways in which the deportation process could be improved to ensure fairness and improved *without* prolonging the deportation process. Ironically, fairness in deportation proceedings would result in considerable judicial savings. Prompt adjudications, fewer appeals, and less resources expended on the wrong cases serves administrative economy as well as fairness.

With the full commitment of the INS and EOIR, an efficient, fair, affordable deportation process could be developed from existing administrative material. However, the commitment must be there. We recommend that the Subcommittee explore the administrative inefficiencies of both agencies before coming to any conclusions about the existing process.

9. *Do you have any suggestions for improving the process for deporting illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.*

A fair and efficient deportation process would serve all legitimate interests, even in the case of an alien convicted of a crime.

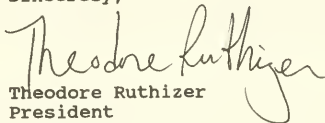
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

April 29, 1993

page 7

Again, I thank you for this opportunity to share with the Subcommittee our views. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,


Theodore Ruthizer
President

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 Washington, DC 20515

April 8, 1993

Mr. Richard J. Wilson
 Coordinating Committee for Immigration Reform
 American Bar Association
 1800 M Street, N.W.
 Washington, D.C. 20036

Dear Mr. Wilson:

Thank you very much for your participation in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service (INS). The record of the hearing could be very helpful to the new administration in identifying necessary changes at INS and I greatly appreciate your help.

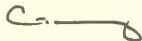
As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

1. You recommended the consolidation of adjudications for the same applicant. Please explain what would be required to implement this idea.
2. You identify delays in decision-making as a major problem, giving as an example the issuance of regulations needed to implement the law. What seems to be the cause of such delays?
3. You testified that proposals "to simply eliminate exclusion hearings and give immigration officers at airports and other ports of entry the final authority to expel any alien who attempts entry without documents or who appears to present fraudulent documents are unwarranted and misguided." The airlines estimate that last year approximately 12,000 people entered the U.S. by destroying their documents while en route aboard commercial aircraft. If summary exclusion is not a good way to handle this, what alternatives should be considered?
4. In your opinion, can the conflict between the service and enforcement function be resolved within the current organization of INS, or is it time to consider an alternative, such as taking the service functions out of the Department, or separating service and enforcement within the Department? If such an approach is appropriate, what could be done to insure that this would not be too disruptive a process?

5. The U.S. currently has 150 asylum adjudicators. Can you estimate how many would be required to effectively address the backlog in adjudications?
6. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly?
7. Mr. Castulo recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. What do you think of his idea?
8. County and state jails in certain states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?
9. Should changes be made in the deportation process? If so, how should it be changed?
10. Do you have any suggestions for improving the process for deporting illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.

Thank you very much for your assistance in this matter.

Sincerely,



Gary A. Condit
Chairman

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May 12, 1993

Rep. Gary A. Condit
Chairman

Information, Justice, Transportation,
and Agriculture Subcommittee
Committee on Government Operations
B-349 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for inviting the American Bar Association to testify before the Subcommittee on March 30. Below are the Association's responses to the additional questions posed in your letter of April 8, 1993.

1. You recommended the consolidation of adjudications for the same applicant. Please explain what would be required to implement this idea.

Adjudications can be consolidated by the agency without any enabling legislation. The INS examinations unit, in consultation with the private bar, should identify benefits that now involve multiple applications or adjudications, and examine options for streamlining those processes. For instance, an individual who is eligible for family unity under the IMMACT §301 is statutorily entitled to work but has to apply for a work authorization document separately after the family unity application has been approved. As noted in our testimony, combining these two processes should benefit the agency as well as the applicant.

2. You identify delays in decision-making as a major problem, giving as an example the issuance of regulations needed to implement the law. What seems to be the cause of such delays?

Some, if not most, delays are a result of lack of adequate resources, but some are due to the multiple adjudications discussed above. The lack of resources appears to be a symptom of a low priority given to non-enforcement activities. I am not in a position to identify the source of delay in the issuance of regulations, but delay has been a problem even when Congress has postponed the effective date of a new program to accommodate the INS, as it did in the 1990 family unity program.

3. You testified that proposals "to simply eliminate exclusion hearings and give immigration officers at airports and other ports of entry the final authority to expel any alien who attempts entry without documents or who appears to present fraudulent documents are unwarranted and misguided." The airlines estimate that last year approximately 12,000 people entered the U.S. by destroying their documents while en route aboard commercial aircraft. If summary exclusion is not a good way to handle this, what alternatives should be considered?

Individuals arriving in this country who appear not to have valid travel documents should be given an opportunity to prove they are admissible under our laws, followed by expulsion if they are not. Such final decisions should not be left to low-level immigration officers at the point of entry. At the same time, individuals who arrive without valid travel documents because they are fleeing from persecution should not be prevented from presenting their claims by overly rigorous procedures.

As an alternative to summary exclusion, I would first recommend that the INS responsibly use the tools it already has rather than be given broad new authority. Current law requires the INS to detain aliens who appear ineligible for entry, including those who arrive without valid documents, until their exclusion hearings are completed. Instead of using that authority as a deterrent, the INS often releases individuals without scheduling immigration court appearances or even imposing appearance bonds. These practices may actually be encouraging abuse.

Second, the Department of Justice could schedule exclusion hearings on an accelerated calendar. This would preserve the alien's due process rights but eliminate the "benefit" of prolonged hearings. Third, to the extent the airport problem is caused by organized fraud, the U.S. Departments of Justice and State need to work cooperatively with foreign governments to eliminate international criminal enterprises that traffic in fraudulent documents.

4. In your opinion, can the conflict between the service and enforcement function be resolved within the current organization of the INS, or is it time to consider an alternative, such as taking the service functions out of the Department, or separating service and enforcement within the Department? If such an approach is appropriate, what could be done to insure that this would not be too disruptive a process?

The ABA does not have a position on this issue. In my opinion, disruption would appear to be an inevitable consequence of dividing the agency. Whether or not the agency is divided, Congress should use its oversight authority to ensure that sufficient resources are allocated to the service functions.

5. The U.S. currently has 150 asylum adjudicators. Can you estimate how many would be required to effectively address the backlog in adjudications?

The INS has indicated that doubling the size of the asylum officer corps would enable it to adjudicate all incoming cases within 90-120 days. If the prompt turn-around were to significantly reduce the volume of incoming cases, some asylum officers could be reassigned to the backlog. We do not know what portion of the backlog represents "active" cases, as many applicants may have left the United States, acquired other immigration status, died, or become members of a protected class. Without this information, I cannot recommend the most effective means of addressing the backlog.

6. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states; particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly?

It is my understanding that immigrants pay more in taxes than they use in benefits, but that generally the federal government is the recipient of the taxes, while the state or local government provides the benefits. Although federal financial assistance may appear to be appropriate, the ABA has no formal position on this issue.

7. Mr. Castillo recommended that a social trust fund be established to assist local and state governments with the cost associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. What do you think of his idea?

The ABA has not considered this issue. I would note, however, that nonimmigrants already pay airport fees that are being used for airport inspections and INS detention.

8. County and state jails in certain states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?

I am not aware that undocumented aliens represent a high percentage of inmates in county and state jails. If this is the case, perhaps aliens are more likely to be sentenced to a term of incarceration than are citizens who commit similar offenses. In addition, there are indications that the state prisons continue to hold aliens who have completed their sentences until their immigration hearings are held. Congress has enacted several provisions to accelerate the deportation of serious noncitizen felons and the INS and immigration courts have a program to conclude deportation proceedings before prison terms are completed. I am not in a position to evaluate the efficacy of these recent measures.

9. Should changes be made in the deportation process? If so, how should it be changed?

The ABA has recommended on several occasions that administrative judges who conduct immigration hearings be appointed under and subject to the Administrative Procedures Act. The INS should also implement conditional pre-hearing release programs, as suggested in our testimony.

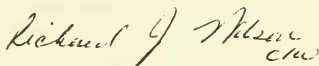
The immigration court system also needs increased resources. Unlike the criminal system, the immigration court does not appoint counsel to indigent respondents. As many aliens do not have counsel, an immigration judge has to explain the court procedures, rights and remedies to each unrepresented individual. Although organizations, including the ABA, operate legal service programs, such private programs cannot meet all the needs for representation. In my opinion, a public defender program, particularly for detained respondents and unaccompanied minors, is vitally needed in the immigration courts and would facilitate court hearings as well as protect the rights of the individuals involved.

10. Do you have any suggestions for improving the process for deporting illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.

Deportation is a harsh consequence. As in the case of U.S. citizens, the sentence imposed on a convicted alien is intended to punish the individual for his or her offense. The ABA believes that not every noncitizen who has committed a crime should also be deported. Rather, we support a provision allowing the sentencing judge who is most familiar with the alien's offense and criminal record to have the authority to prevent an alien's deportation on criminal grounds. Such "judicial recommendations against deportation" (JRADs) would have no effect if the alien is also deportable on another ground, such as having made an illegal entry. The ABA similarly believes that the immigration laws should be amended to allow the Attorney General to waive any ground of deportation in appropriate cases.

The ABA does not favor the removal of an individual without a deportation hearing to determine whether the individual is an alien, has committed a deportable offense, and qualifies for relief. Neither the States nor the INS are capable of making these sensitive and specialized judgments and there would be constitutional impediments to eliminating such hearings.

Sincerely,



Richard J. Wilson
Member, Coordinating Committee
on Immigration Law

cc: Lloyd Lochridge
Robert D. Evans
Lillian Gaskin
Carol L. Wolchok

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Congress of the United States
House of Representatives
 Information, Justice, Transportation, and Agriculture
 Subcommittee
 of the
 Committee on Government Operations
 B-349-C Rayburn House Office Building
 Washington, DC 20515

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April 8, 1993

Ms. Cecilia Munoz
 Senior Immigration Policy Analyst
 National Council of La Raza
 810 First Street, N.E. #300
 Washington, D.C. 20002

Dear Ms. Munoz:

Thank you very much for your participation in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service (INS). The record of the hearing could be very helpful to the new administration in identifying necessary changes at INS and I greatly appreciate your help.

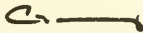
As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

1. You testified that over one thousand incidents of abuses in immigration law enforcement have occurred over the last three years. Would you please provide more details regarding the problems encountered in the processing of complaints about the Border Patrol by the Department of Justice?
2. You described the failure of INS to promulgate regulations establishing standards for the use of force by the Border Patrol and pointed out that proposed rules fall short of the statutory mandate. Could you provide more details regarding the deficiencies of the proposal?
3. Mr. Stein advocated a mandatory national authorization document for all workers, citizens and aliens alike. What do you think of his proposal?
4. You recommended that an independent audit be conducted of INS finances. Both the General Accounting Office and the Inspector General have found serious deficiencies in the manner in which INS handles its finances. What would an additional audit accomplish that has not already been done?

5. In discussing the balance between service and enforcement, you mentioned the success of recent initiatives that indicate that with proper training, it is "possible to conduct adjudications without an enforcement bias." In light of this assessment, is it premature to give consideration to splitting the enforcement and service responsibilities of the Immigration and Naturalization Service?
6. You have previously raised concerns about the accuracy and adequacy of data at the INS. Because of inaccuracies in data, sometimes an employer cannot verify an individual's eligibility to work. Have you seen an improvement in the quality of data over the past two or three years?
7. Your organization has been concerned about the conditions for children held in detention. In light of the recent Supreme Court decision upholding the INS policy under which alien children facing deportation hearings are held in detention centers if they lack a close relative or legal guardian in the United States, what action would you recommend be taken by INS to insure proper treatment of children in custody?
8. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly?
9. Mr. Castillo recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. What do you think of his idea?
10. County and state jails in certain states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?
11. Should changes be made in the deportation process? If so, how?
12. Do you have any suggestions for improving the deportation process for illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.

Thank you for your assistance in this matter.

Sincerely,



Gary Condit
Chairman

NCLR

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May 11, 1993

The Honorable Gary Condit
Chairman, Subcommittee on Information,
Justice, Transportation, and Agriculture
U.S. House of Representatives
B-349-C Rayburn Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to the questions which you sent to me regarding NCLR's testimony at the March 30 hearing on the Immigration and Naturalization Service (INS). I have reproduced the questions here, and respond to them below:

1. *You testified that over one thousand incidents of abuses in immigration law enforcement have occurred over the last three years. Would you please provide more details regarding the problems encountered in the processing of complaints about the Border Patrol by the Department of Justice?*

Examples of abuse as well as the failure of the system to address complaints are well documented. For example, a February, 1992 report by the Immigration Law Enforcement Monitoring Project (ILEMP) of the American Friends Service Committee documented over a thousand incidents of abuse during the period from May 1989 to May 1991. These results were confirmed and expanded upon in a report by Americas Watch issued in May 1992. Examples of abuse included psychological, verbal and physical abuse, illegal or inappropriate searches, violations of due process, illegal or inappropriate seizures, and seizure and destruction of property. According to the ILEMP report, "...victims are rarely, if ever, informed of the disposition of their complaints."¹



Sealing Our Borders: The Human Toll, Third Report of the Immigration Law Enforcement Monitoring Project, American Friends Service Committee, 1992. See also, *Brutality Unchecked: Human Rights Abuses Along the U.S. Border with Mexico*, Americas Watch, 1992.

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A recent series of reports by the *El Paso Times* confirms the finding that complaints of abuse are rarely addressed. In addition, the reporting shows that when complaints are addressed, they are often handled inappropriately or ineffectively. According to the *Times*, a forthcoming report by the U.S. Commission on Civil Rights will show that:

- Enforcement agencies at the border have conducted very little public outreach; information on how to file a complaint is hard to find.
- The internal process for investigating complaints "remains a grim paper chase even after the 1990 Immigration Act ordered that the process be streamlined."²
- The INS refers serious brutality complaints to the Department of Justice Office of the Inspector General, which is burdened with other investigations and rarely follows up.

To provide further detail on the problem, the *Times* taped the response to ten legitimate complaints at the border, which highlighted examples of problems in the system. About the INS the *Times* noted, "The agents' behavior ranged from bafflement at proper complaint procedures to outright bullying."³ These reports underscored the long experience of Latinos living in border areas who face abuse by the Border Patrol and have no faith that, if they complain, the government will take action.

2. *You described the failure of INS to promulgate regulations establishing standards for the use of force by the Border Patrol and pointed out that proposed rules fall short of the statutory mandate. Can you provide more details regarding the deficiencies of the proposal?*

The Immigration Act of 1990 (IMMACT) grants expanded enforcement authority to INS officers and employees. Recognizing its responsibility to ensure that this new authority is carried out responsibly, Congress required the Attorney General to define the purposes, conditions, and manner in which this new authority will be used. The statute clearly states that the regulations must describe a new training program and a new expedited, internal review process to be used when newly specified enforcement standards are violated. Rather than establish new standards or training and review procedures, the proposed rule simply articulates existing INS policy, relying on existing training programs which have already proved inadequate and leaving important enforcement questions to future "guidelines" to be prepared by the INS Commissioner. Many organizations, including NCLR, question the very

² "Paper chase, then slow response," *El Paso Times*, December 7, 1992.

³ *El Paso Times* op.cit.

legality of the proposed rule given the clear statutory mandate. To date, nearly three years after the enactment of IMMACT, no final rule has been issued.

3. *Mr. Stein advocated a mandatory national authorization document for all workers, citizens and aliens alike. What do you think of his proposal?*

NCLR has testified before the Immigration Subcommittees of both the House and Senate, as well as the Social Security Subcommittee of the House, that a national work authorization document is unlikely to be effective in combatting document fraud related to, or discrimination caused by, employer sanctions, and that it is likely to create new problems which will disproportionately affect Hispanics. In addition, Congress has twice rejected the idea, first by stipulating in the Immigration Reform and Control Act that identification cards are an inappropriate policy to emerge from the law, and second by resoundingly defeating the rule on the Immigration Act of 1990 because the conference report contained a provision for a pilot program to test a work authorization card. The offending provision was removed from the conference report, which then passed both the House and Senate.

I have attached a copy of NCLR's previous testimony on the ID card issue, which articulates the objections to a work authorization card in great detail. Very briefly, there is substantial evidence that, because persons applying for such a card would have to present documents such as birth certificates or school records in order to obtain a card, the process of document fraud would simply be transferred to these so-called "breeder documents." In order to create a completely fraud-proof system, the U.S. would have to standardize and strengthen the security of all forms of documentation which appear over a lifetime, an extraordinarily costly prospect in both financial and political terms. In addition, a work authorization document would not eliminate many of the forms of discrimination which have been associated with employer sanctions. For example, though employers are required to check the documents of all new employees, many only check the documents of their Latino and Asian workers. A standardized document would do nothing to change this discriminatory practice.

Moreover, there is substantial danger that a document designed to be used to verify employment eligibility would be misused in a number of contexts which jeopardize the basic rights of Americans. For example, Hispanics in the Southwestern U.S. -- including NCLR President Raul Yzaguirre and U.S. Representative Kika de la Garza -- have had to carry cards and can testify to the fact that they can be misused against Latinos in a number of law enforcement contexts. Not carrying a card at all times can become reason for a Latino to be "suspect," and the card can be required for a variety of purposes not related to employment verification. In addition, as has already occurred in the driver's license context, many Latinos and other "foreign-looking" people will be denied cards, or will have to go to extraordinary lengths to obtain cards, because intake clerks refuse to accept genuine underlying documents as valid (Puerto Rican birth certificates or church-issued Baptismal certificates, for example). Persons who don't appear "foreign" will have no trouble obtaining or

replacing cards; Latinos, Asians, and others who "seem" foreign are likely to experience difficulties in obtaining or replacing cards.

4. *You recommended that an independent audit be conducted of INS finances. Both the General Accounting Office and the Inspector General have found serious deficiencies in the manner in which the INS handles its finances. What would an additional audit accomplish that has not already been done?*

NCLR believes that an independent audit is important, not only to determine in greater detail the problems with the way in which the INS handles its finances, but to recommend specific changes in INS financial policies and procedures. For example, as I testified, the INS is unable to account for how it establishes examinations fees or how the money is spent on adjudications. NCLR believes that an audit conducted from outside of the government can make an independent assessment of the problems and recommend concrete changes.

5. *In discussing the balance between service and enforcement, you mentioned the success of recent initiatives that indicate that with proper training, it is "possible to conduct adjudications without an enforcement bias." In light of this assessment, is it premature to give consideration to splitting the enforcement and service responsibilities of the Immigration and Naturalization Service?*

In the past, NCLR has testified in favor of splitting the enforcement and service functions of the INS into two different agencies; we still believe that this is one way of resolving the problem with the enforcement mentality "spilling over" into the INS service function. However, NCLR does not believe that simply splitting the agency into two solves the multiple problems of the INS. For example, problems with financial accountability, management, and failure to follow established procedures which I mentioned in my testimony would not be directly addressed by a simple splitting of the agency. In addition, NCLR understands that the logistical problems of dismantling the INS and creating two new agencies are substantial.

NCLR believes that there are methods of addressing the enforcement bias within the INS without resorting to the creation of new agencies. We have a few positive examples -- much of the legalization process and the basic structure of the new asylum procedure, for example -- which illustrate that, with careful management, service programs can be designed and implemented in a generous spirit. However, such examples are few and far between; the INS must make a consistent effort to train its adjudicators and structure its adjudication process to maximize both efficiency and the effectiveness of its programs, and it must undertake initiatives in cooperation with local community-based organizations to design local procedures and promote special projects. NCLR has proposed to the INS and to Congress, for example, that a simple, low-cost initiative on naturalization in which the INS works with local groups could do a great deal to improve the image and the effectiveness of the service side of the agency.

Moreover, as NCLR's testimony mentions, INS enforcement procedures also need substantial revision, including training for enforcement personnel. Adequate training and the establishment of updated and reasonable enforcement standards and procedures can do a great deal to improve the effectiveness of INS enforcement without encouraging an overall enforcement mentality at the agency.

Finally, Congress must balance its own actions; as long as it continues to focus its attention only on immigration enforcement and not on the overall mission of the INS, the agency will have incentive to focus all of its resources and attention on enforcement, thereby undercutting its service capacity. A more balanced approach to immigration policy by Congress can encourage more balance at INS.

6. *You have previously raised concerns about the accuracy and adequacy of data at the INS. Because of inaccuracies in data, sometimes an employer cannot verify an individual's eligibility to work. Have you seen an improvement in the quality of data over the past two or three years?*

No. In fact, we continue to hear that poor data continues to plague employer sanctions enforcement, often at the expense of Latinos who are legally authorized to work. We have heard a number of specific horror stories in which the INS checks the workers at a single place of employment, and mistakenly tells the employer that some are not authorized. The jobs of these individuals are jeopardized because of INS inefficiency; this is one of the many unreasonable effects of the combination of employer sanctions and INS inefficiency on the Hispanic community.

7. *Your organization has been concerned about the conditions for children held in detention. In light of the recent Supreme Court decision upholding the INS policy under which alien children facing deportation hearings are held in detention centers if they lack a close relative or legal guardian in the United States, what action would you recommend be taken by the INS to insure proper treatment of children in custody?*

NCLR is part of a Working Group on Minors in Detention, which consists of the major religious, child welfare, and immigrant service groups throughout the country. For several years now, the working group has advocated that the INS policy needs to be drastically altered, especially regarding the release of minors to parents, family members, or other screened responsible adults. We note that the Supreme Court decision did not address the merits of the case, and continue to advocate that it is unreasonable for the INS to be the only law enforcement agency in the country which regularly detains non-delinquent minors. Despite the Supreme Court decision, we believe that it is possible and essential for the INS to reverse its policy.

The working group has made several key recommendations to the INS which are summarized below:

1. Procedures for prompt release must be implemented and standardized across the country;
 2. The best interest of the child is served by reuniting minors with their parents, close family members, or legal guardians;
 3. Children should be released to agencies providing licensed foster or group home care in appropriate circumstances;
 4. Children should be released to unrelated responsible adults in appropriate circumstances;
 5. Except under extraordinary circumstances, children and youth must not be maintained in shelter care facilities for more than thirty days. These "longstayers" should be released into programs that can provide long-term foster living arrangements for the period in which minors are in immigration proceedings;
 6. Programs that provide short-term care to juveniles in INS custody must meet applicable national and state standards;
 7. INS policy must prevent the arbitrary transfer of children from one detention facility to another;
 8. Minors in immigration proceedings should not be housed in juvenile justice facilities;
 9. Facilities that institutionalize detention should be phased out;
 10. The INS and private agency coalition members should appoint contact persons to act as liaisons for the resolution of field problems;
 11. Improved documentation on children in INS custody is essential to planning programs that serve their best interest;
 12. An advisory committee should be formed to augment INS expertise in the area of child welfare.
8. *The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What do you think needs to be done at the Federal level to address this problem? Do you believe that the lack of Federal financial assistance contributes to ethnic tensions within communities, whether directly or indirectly?*

A great deal of attention has been paid recently to the costs associated with immigration, both legal and illegal, particularly studies produced by the counties of Los Angeles and San Diego. However, a number of noted scholars, including David Hayes-Bautista, a UCLA demographer, and Wayne Cornelius of the Center for U.S. Mexico Studies of UC San Diego, as well as a forthcoming study by Jeffrey Passel of the Urban Institute indicate that these studies are inaccurate, and overestimate the local costs of immigration while underestimating immigration's benefits.⁴

The question of the purported costs and benefits associated with immigration is a complex one, to which there is no simple formula which can be put on a balance sheet. For every study which suggests that the costs of immigration outweigh the benefits, there is evidence to suggest that the reverse is true. For example, *Business Week* reports that, "Even immigrants with less education are contributing to the economy as workers, consumers, business owners, and taxpayers. Some 11 million immigrants are working, and they earn at least \$240 billion a year, paying more than \$90 billion in taxes. That's a lot more than the estimated \$5 billion immigrants receive in welfare."⁵ Similarly, research conducted by the Rand Corporation in 1985 found both costs and benefits associated with immigration in California, but concluded that, overall, immigration was an important contributor in the then-booming economy of the state.

While NCLR believes that the costs regularly associated with immigration are exaggerated, and that its benefits are not fully appreciated, it is also true that local communities with large populations of newcomers face a significant challenge which has been ignored by the Federal government. Programs and policies which are important to the overall community, such as health care and education, have been neglected, largely because the federal government did not support state and local governments who provide these essential programs. Immigrants clearly receive more of their share of the responsibility for the current crisis facing many local communities; however, NCLR believes that it is appropriate -- in fact critical -- for the federal government to re-evaluate its role in supporting state and local government capacity to ensure the health and welfare of local communities.

While federal neglect of local communities may have contributed to local tension, NCLR believes that fundamental ethnic tensions are caused, at best, by misunderstandings and lack of information among different communities, and at worst by bigotry, a great deal of which emerges around the question of immigration. Unfortunately, a number of anti-immigrant organizations exploit fears and real problems in local communities, like lack of jobs, environmental problems, the failure

⁴ See "Racists or realists? Anti-immigrant sentiment grows in California," *San Francisco Examiner*, March 19, 1993.

⁵ "The Immigrants: How they're helping to revitalize the U.S. Economy," *Business Week*, July 13, 1992.

of the educational system and crime, suggesting that immigration is at the core of all of these social problems.⁶ NCLR, along with many organizations representing various religious, ethnic, and racial groups, believe that these tactics promote tensions at the local level at a time when members of the communities affected are seeking to work together to solve common problems.

9. *Mr. Castillo recommended that a social trust fund be established to assist local and state governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visits could finance the fund. What do you think of his idea?*

NCLR has not considered and has no formal position on this issue. The idea has merit, to the extent that two major problems are avoided. First, such a proposal could place a burden on non-immigrants who enter the United States to visit or conduct business, and might have the effect of discouraging this activity. Second, the INS needs to be able to establish proper accounting for and use of the fees it already collects -- a problem discussed at length in NCLR's testimony -- before it should establish new fees for any purpose.

10. *County and state jails in certain states such as California have a relatively high percentage of inmates who are illegal aliens and have been imprisoned for committing felonies. Do you have any ideas about what could be done to alleviate the costs associated with these imprisonments?*

NCLR is not aware of any credible reports which show a high percentage of undocumented immigrants in county and state jails. However, Congress has enacted numerous provisions to accelerate the deportation of noncitizens convicted of serious felonies, and the INS and immigration courts also have a program to facilitate deportation hearings while convicted felons are imprisoned. If the Subcommittee is interested in pursuing this question, NCLR recommends collecting accurate data about the actual scope of the problem, and evaluating the existing means to address it before putting new proposals on the table.

11. *Should changes be made in the deportation process? If so, how?*

NCLR concurs with the basic recommendations articulated by the American Bar Association on several occasions that greater resources be provided to the immigration court system, and that administrative judges who conduct deportation hearings be

⁶ The Federation for American Immigration Reform (FAIR), who also presented testimony at the hearing, is one such organization. For an analysis of FAIR's history, the anti-Hispanic sentiments of its founder, and its connection to the English-only movement, see *Hold Your Tongue: Bilingualism and the Politics of "English Only,"* James Crawford, Addison Wesley, New York, 1992, pp. 148-175.

covered by the Administrative Procedures Act. In addition, we support the provision of counsel to respondents in deportation hearings.

12. *Do you have any suggestions for improving the deportation process for illegal aliens who have committed crimes? If you do not believe that the process can be improved, please explain why not.*

Again, NCLR believes that accurate data must be collected to determine whether there indeed is a problem with undocumented immigrants committing crimes and failing to receive punishment for such crimes. It is premature to establish remedies when it is not clear that a problem exists. To the extent that a problem can be documented, we are prepared to support proposals that would accelerate deportation of convicted felons, consistent with due process protections.

I appreciate the opportunity to provide the Subcommittee with additional information. Please contact me if you have any questions.

Sincerely,

Cecilia Muñoz

Senior Immigration Policy Analyst

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**TESTIMONY ON THE USE OF THE SOCIAL SECURITY NUMBER
AS A NATIONAL IDENTIFIER**

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Before the Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
2/27/91



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LA RAZA: The Hispanic People of the New World

**STATEMENT OF CECILIA MUNOZ,
SENIOR IMMIGRATION POLICY ANALYST
NATIONAL COUNCIL OF LA RAZA**

I. INTRODUCTION

Good Morning, Mr. Chairman and members of the Subcommittee, I am Cecilia Muñoz, Senior Immigration Policy Analyst at the National Council of La Raza (NCLR). NCLR is a Washington D.C.-based national organization dedicated to improving life opportunities for Hispanics in the United States. The Council serves as a national umbrella organization for 128 local "affiliates" -- Hispanic community-based groups which provide employment, education, health, housing, immigration, and social services to over one million Hispanics annually. NCLR has a long history of interest in immigration issues; Hispanics represent both the first and the most recent immigrants to the United States. The Council was actively involved in the debate which led to the Immigration Reform and Control Act of 1986 (IRCA), and many NCLR affiliates assist immigrants in the legalization process. In addition, NCLR has been actively involved in monitoring the discrimination which has resulted from the employer sanctions provisions of IRCA, and the various proposals for national ID cards which have emerged alternately as methods of strengthening employer sanctions policy and of mitigating the resulting discrimination. We are pleased that the Subcommittee is giving due consideration to this critical matter, and we are delighted to have the opportunity to testify.

II. BACKGROUND

The question of developing some kind of national identifier or a national ID card has been raised as a part of the immigration debate since the early 1980s, when the Select Commission on Immigration and Refugee Policy developed the policy proposals which became the basis for the Immigration Reform and Control Act of 1986 (IRCA).¹ The ID card question continued to emerge around the employer sanctions provisions recommended by the Select Commission and enacted as part of IRCA. Employer sanctions, intended to control illegal immigration by making it more difficult for undocumented workers to find jobs in the U.S., require employers to check the documents of all of their new employees, in order to verify their eligibility to work in the United States. Many proponents of some form of national identification system -- an ID card, a "phone-in" system, a standardized drivers license, and a more secure and universal social security card have all been proposed -- argue that such a system would strengthen employer sanctions by making it more difficult for undocumented workers to use counterfeit documents to find jobs in the United States. Nevertheless, when Congress enacted IRCA it specifically stated that the legislation was in no way intended to endorse or lead to the development of a more comprehensive identification system, primarily because the bill's proponents recognized the controversial nature of ID card proposals.²

The employer sanctions policy has had a major, purportedly unintended, side effect which has also fueled proposals for some form of ID card. Over a dozen separate studies, culminating in a 1990 report by the U.S. General Accounting Office (GAO) have concluded that employer sanctions have caused a widespread pattern of discrimination against Hispanics, Asians, and other Americans who appear "foreign" to their employers.³ The growing evidence of discrimination has led to proposals for some form of ID card which would, proponents claim, alleviate the problem of discrimination which has resulted from this policy. A proposal for a "voluntary"

¹ U.S. Immigration Policy and the National Interest, Select Commission on Immigration and Refugee Policy, March 1, 1981.

² The Immigration Reform and Control Act of 1986, PL 99-603, (November 6, 1986).

³ See Unfinished Business: The Immigration Reform and Control Act of 1986, National Council of La Raza, December 1990, for a summary of the major studies on discrimination caused by employer sanctions.

identification card received little enthusiasm when it was proposed in the Subcommittee on Immigration, Refugees and International Law in the 101st Congress. Opponents of the idea, including NCLR, argued that a "voluntary" card was likely to be mandatory only for those who are experiencing discrimination under employer sanctions, which would probably be ineffective, and would create new forms of discrimination.⁴

Most recently, a proposed "pilot program" which would have required three states to develop a comprehensive ID card based on the drivers license became the basis for an emotional eleven-hour debate on the rule preceding enactment of the Immigration Act of 1990 which nearly killed the legislation. The Congressional Hispanic Caucus led the charge to defeat the rule because of strong sentiment that any form of ID card is likely to have a negative effect on the Hispanic community, and because neither body of Congress had been given the opportunity to vote on the matter or consider it in hearings.⁵ This most recent battle over a modest ID card proposal provides an example of the Hispanic-American community's profound opposition to any form of identification system, particularly one which is raised in an immigration context.

III. ID CARD AS A PROPOSED REMEDY FOR DISCRIMINATION

A. Discriminatory Practices under Employer Sanctions

The multitude of studies which illustrate the discriminatory effects of employer sanctions show that some -- but not all -- of the problems created by the policy arise from its documentation requirements. Under the law, each employer is required to verify the employment eligibility of new-hires by completing INS Form I-9, which lists a number of the documents which establish authorization to work in the U.S. Technically, employers are required to check the documents of all new employees once the hiring process has occurred. Unfortunately, there is ample evidence that employers, simply to protect themselves, have adopted hiring practices which result in employment discrimination and lost job opportunities for "foreign-looking" American citizens and other legally authorized workers.

According to the various studies which document discrimination caused by employer sanctions, there are several major discriminatory behaviors which have been adopted by employers as a result of the law:

- "Citizens only" policies - According to a 1990 GAO report, 14.7% of employers surveyed responded to the enactment employer sanctions by adopting a policy to hire only persons born in the United States.⁶ Such a policy excludes large numbers of persons who are legally authorized to work, but are not U.S. citizens;
- Selective checking of documents - According to the GAO survey, 8.6% of employers surveyed responded to employer sanctions by checking the documents only of employees with a "foreign" appearance or accent;
- Applying extra scrutiny to the documents of "suspect" persons - Several studies which focused on cities with large immigrant populations, like Los Angeles and New York found that the documents of "foreign looking" persons were more likely to be considered suspect, and that many legally authorized workers -- including Puerto Ricans, who are U.S. citizens by birth -- were being asked to produce more documents even after they had established their right to work in the U.S.;⁷

⁴ "Testimony on the Adoption of a Voluntary Work Authorization Card as Proposed in H.R. 3374," National Council of La Raza, 11/9/89.

⁵ *Congressional Record*, Daily Edition, October 26, 1990, pp. H12980-12987.

⁶ GAO 1990.

⁷ Coalition for Humane Immigrant Rights of Los Angeles, Update: The Effects of Employer Sanctions on Workers, July 1989; the City of New York Commission on Human Rights,

- **Avoiding "foreign sounding" job applicants** - Hiring audits were conducted in New York and Los Angeles by civil rights organizations, and in Chicago by the GAO; all found that when accented and non-accented callers with similar qualifications inquired about entry-level jobs, those with even slight accents were treated vastly differently than similarly-qualified callers without accents.⁸ In addition, the GAO survey found that 6.6% of employers admitted to staying away from "foreign" looking or sounding job applicants.

The evidence of discrimination, and other studies of the implementation of employer sanctions suggest that there are a number of ways to explain why employers have responded to the law by adopting discriminatory hiring practices. Perhaps most significant, it is abundantly clear that employers do not fully understand the law or their obligations under it. Many employers are staying away from "foreign-looking" persons simply out of confusion, or out of fear of enforcement of employer sanctions. In addition, there is widespread evidence that the number of documents which establish work authorization is confusing, which leads many employers to reject documents which are perfectly valid. Finally and unfortunately, it is also true that employer sanctions have provided a means for employers who were inclined to discriminate against Hispanics to do so for seemingly "legitimate" reasons.

B. A national identifier would not materially reduce discrimination

Because of the extensive evidence that employer sanctions have caused discrimination, the GAO and others have proposed that the social security card, some other document, or the social security number be used in a system to provide one single method of identifying workers and their eligibility to work in the United States. The philosophy behind such a proposal is that employers, who are currently presented with a confusing array of documents to prove work authorization, will be less likely to behave in discriminatory ways if they are confident that everyone has the same document, and they are able to recognize it.

A uniform document might reduce discrimination only in those cases where employers are rejecting unfamiliar documents or asking for additional documentation from Hispanic and Asian applicants; however, such a document would almost certainly not affect other discriminatory behaviors which have erupted since the enactment of IRCA. For example, GAO reports from 1988 and 1990 indicate that employers, though required to check the documents of all new hires, are selectively checking the documents of employees whose appearance, name, or accent suggests that they are foreign.⁹ Providing everyone with the same document does not appear likely to change this discriminatory behavior.

Similarly, the results of three separate hiring audits indicate that employers are screening out applicants with foreign accents even before the application process begins. Because these discriminatory practices occur long before documents must be checked, it is clear that the adoption of a new ID system will not reduce this type of discrimination. The communities whose civil rights have been violated as a result of the enactment of employer sanctions are unwilling to accept the adoption of new policies designed to "fix" the law, particularly given the likelihood that, at best, they will only alleviate part of the problem. Indeed, the ethnic communities affected, many religious and professional organizations, and much of the civil rights community believe strongly that the only proper response to the ineffective, discriminatory employer sanctions policy is to repeal it immediately.

Tarnishing the Golden Door: A report on the widespread discrimination against immigrants and persons perceived as immigrants which has resulted from the Immigration Reform and Control Act of 1986, August 1989.

⁸ Coalition on Humane Immigrant Rights of Los Angeles; City of New York Commission on Human Rights; GAO 1990.

⁹ U.S. General Accounting Office, Immigration Reform: Status of Implementing Employer Sanctions after Second Year, November 1988; GAO 1990.

C. National ID system will lead to new forms of discrimination

It is abundantly clear to those who have suffered discrimination as a result of employer sanctions as well as the kinds of discrimination which have unfortunately plagued this society throughout its history, that the adoption of a national ID system of any kind will lead to new forms of discrimination. Many Hispanic Americans, including Congressman Kika de la Garza (D-TX) and NCLR President Raul Yzaguirre, have experienced routine misuse of identification cards in border areas, where U.S. citizen Hispanics were once encouraged to carry cards to prevent being mistakenly classified as undocumented immigrants and subsequently detained or deported. Random document inspections and searches of Hispanics at border checkpoints are already common; with use of a national identifier, such procedures are likely to be adopted in areas away from the border. Failure to carry a card at all times could be perceived as a reason for search, detention, or arrest. Even a card which is designed for use only in the context of a job search, by its very existence, is likely to be used more expansively, at the expense of the Hispanic community.

In addition, the very process of obtaining such a card is likely to cause problems for Hispanics. To the extent that fraudulent work authorization documents now undermine the enforcement of employer sanctions, one would expect a secure work authorization document system to become dependent on the security of underlying documents. These underlying documents, which would inevitably be necessary to obtain an ID card are, therefore, the key to its security and successful implementation. However, adopting such a policy could mean that the use of fraudulent documents, or the discriminatory treatment of "foreign-looking" persons would re-emerge around the process of obtaining underlying documents.

For example, proponents of a national identity card have argued that birth certificates - which are not uniform even throughout the U.S. much less in other countries -- could be forged with relative ease, and thus used to obtain the ID document. The mere discussion of such a notion increases the likelihood that the birth certificates of "foreign-looking" persons will be considered suspect. The birth certificates of Hispanic-Americans, therefore, could be subject to excessive scrutiny. Persons who appear "likely to be undocumented" by virtue of appearance or speech accent may be required to present more supporting documents than their Anglo counterparts, and could be subject to delays in receiving the card while their documents are checked.¹⁰ Such a system could, therefore, merely transfer the discrimination which is already occurring in the hiring process, to the process of obtaining a card.

Furthermore, under employer sanctions, many Hispanic Americans are experiencing excessive delays in obtaining documents which damage their opportunities to find jobs. For example, since the enactment of IRCA, many Puerto Ricans have experienced difficulty obtaining jobs because of six to eight week delays in receiving copies of their birth certificates from Puerto Rico.¹¹ Under a comprehensive ID system, there are likely to be further delays in verifying or obtaining underlying documents, which will cause great hardship for those whose employers are requiring cards in order to obtain a job.

IV. ID CARD AS METHOD OF STRENGTHENING EMPLOYER SANCTIONS

A. Inherent weaknesses in the policy

A national identifier was first proposed in the immigration context as a means of ensuring the effectiveness of employer sanctions, by making it difficult for undocumented workers to skirt

¹⁰ The Institute for Public Representation, Memorandum to the National Council of La Raza, Georgetown University Law School, November 7, 1989.

¹¹ Letter from Howard Golden, President of the Borough of Brooklyn, to The Honorable Rafael Hernandez-Colon, Governor of Puerto Rico, March 28, 1989.

the new law by using forged documents to establish work authorization.¹² While such a proposal may address one of the weaknesses of employer sanctions, examinations of the policy suggest that it is inherently flawed; there are much more significant deficiencies in employer sanctions which make them unlikely to be effective, even if a "forge-proof" document were developed.

First, perhaps the most fatal flaw of the employer sanctions policy to reduce illegal immigration is that it attempts to deal only with the market which "attracts" immigrant labor, without taking into account the factors which encourage migration from the home country. For example, Wayne Cornelius, of the Center for U.S.-Mexican Studies has done extensive research on the nature of the population likely to migrate and their reactions to the enactment of IRCA. His work identifies specific "sending communities" for which migration has been a survival strategy for decades, and finds that the propensity to migrate has not changed since the enactment of employer sanctions.¹³ The arrival of large numbers of Central Americans who have entered the U.S. through the Southern border in the years since the implementation of IRCA also shows that factors at home which encourage migration have proven to be much stronger than the laws within the U.S. which attempt to control it.

In addition, there is scant evidence to suggest that employer sanctions really are changing the conditions within the U.S. which encourage undocumented immigration. An interim report prepared for the Department of Labor, for example, has found that employer sanctions have had very little effect in changing the labor market conditions which encourage illegal migration, and are unlikely to significantly alter the labor market.¹⁴ Similarly, data on the level of apprehensions at the Southern U.S. border clearly show that, though illegal crossings diminished somewhat in the year immediately following enactment of IRCA, they have begun to rise again in recent years, matching their peak 1986 levels in some border areas.¹⁵ Clearly, border crossings and tension at the border are on the rise, suggesting that the long-term effects of employer sanctions on reducing illegal entries are negligible.

A second and severe problem with employer sanctions is the very implementation of the policy. A recent study released by NCLR, *Unfinished Business: The Immigration Reform and Control Act of 1986*, contains an extensive analysis of the implementation of employer sanctions by the Immigration and Naturalization Service. Using data compiled by the GAO, NCLR found that, even though the INS had more than doubled its employer education efforts in the period between 1988 and 1990, employer understanding of the law dropped by as much as 26 percentage points during that period.¹⁶ The effectiveness of employer sanctions, like U.S. tax policy, is heavily dependent on employer understanding of the law, compliance with its requirements, and fear of enforcement of its penalties. Yet the INS has actually reduced its employer education efforts since 1990, after disappointing results prior to that period.

In addition, several studies by the Rand Corporation and Urban Institute indicate that sanctions enforcement has been uneven and could lead employers to believe that they do not have to fear enforcement of the law.¹⁷ According to all available evidence, the documentation requirements of sanctions are not and are not likely to become an employment standard for which

¹² Select Commission *op.cit.*

¹³ Wayne A. Cornelius. "Presentation to the Ninth Annual Briefing Session for Journalists," Center for U.S.-Mexican Studies, June 22, 1989.

¹⁴ Robert L. Bach and Howard Brill, "Shifting the Burden: The Impacts of IRCA on U.S. Labor Markets," State University of New York, February 1990.

¹⁵ "Four Years After Reform," *The Government Executive*, September 1990.

¹⁶ *Unfinished Business*, *op.cit.*

¹⁷ Michael Fix and Paul T. Hill, *Enforcing Employer Sanctions: Challenges and Strategies*, (Rand Corporation, Urban Institute), May 1990.

employers expect to be held accountable.¹⁸ The very nature of the INS, which is primarily responsible for the implementation of sanctions, further suggests that the prospects for the success of the policy are dim. It is widely recognized that the INS has severe bureaucratic and management problems which have consistently affected its ability to enforce pre-IRCA immigration laws and provide services; it is unlikely that such an agency will effectively implement a policy which affects every U.S. employer. Clearly, implementation of sanctions thus far, and the lack of promise that the law can ever be implemented effectively, are much more responsible for the weakness of the policy than the lack of a national identifier.

B. National ID system not likely to be effective

Even if Congress were to ignore the many fatal flaws inherent in employer sanctions and move to implement a national ID system using the social security number, there are strong reasons to doubt that such a system would increase the effectiveness of employer sanctions in curtailing illegal immigration. Presumably, the ID card is being proposed because of the fear that undocumented workers are responding to employer sanctions by obtaining fraudulent documents. The simple establishment of a card, however, is not a guarantee that a market for false papers, if it exists, will be eliminated. As mentioned above, just as the discriminatory scrutiny of documents is likely to be transferred to the process of obtaining underlying documents under a new ID system, so is the process of obtaining fraudulent documents. A national ID system can only be secure if accompanied by methods of ensuring the security of all documents which establish identity, residence, and work authorization; however, such a comprehensive policy is likely to be excessively costly, both in monetary terms and in terms of human and civil rights.

Even if Congress were to choose a comprehensive identification policy which involves a large array of documents, current experience with employer sanctions suggests that such methods do not discourage undocumented immigration, but rather push the undocumented further underground. The first attempt by the United States to eliminate a large class of unauthorized workers, the end of the notorious *bracero* program, did not succeed in its goals, and instead paved the way for the foundation of what is now a sizeable undocumented community living and working within the U.S. According to immigration scholars Alejandro Portes and Ruben Rumbaut, the 1964 termination of the *bracero* program "was prompted by the desire to curtail low-wage foreign labor; instead, this Mexican labor inflow went underground and then expanded rapidly."¹⁹ There is ample evidence indicating that employer sanctions have had the same effect; rather than curtailing undocumented immigration, they have pushed undocumented immigrants underground, subjecting them to poor wages and working conditions.²⁰ The failure of the Latin Investment Company in Washington D.C. provides a recent example of how, when faced with increasing restrictions, undocumented immigrants simply begin to function in a underground economy, making them subject to greater levels of exploitation. All of the evidence surrounding employer sanctions suggests that "strengthening" the policy by even the most comprehensive documentation system will simply push people further underground; thus, a policy intended to prevent exploitation will actually provide more avenues for it to occur.

C. Logistical problems with a national ID system

Perhaps the most glaring threat to the successful implementation of a national ID system are the data-management problems within the INS. Clearly, for a national identifier to be used in the immigration context, it will have to be tied in somehow to information from the INS which verifies immigrant status or work eligibility. One such verification program, the Systematic Alien Verification for Entitlements (SAVE) program, is already in operation in the hope that it will prevent ineligible aliens from receiving public benefits. A 1987 study by the General

¹⁸ Unfinished Business, *op.cit.* pp. 31-32.

¹⁹ Alejandro Portes and Ruben G. Rumbaut, Immigrant America: A Portrait, (University of California), 1990, pp. 234-235.

²⁰ Unfinished Business, *op.cit.*

Accounting Office (GAO) shows that "there is considerable room improving the accuracy and reliability of the automated system."²¹ According to the GAO, 30.5 % of the individuals applying for verification needed a secondary check, because their information could not be found in the data base. Secondary checks, which are performed manually, are both costly and time consuming. In the case of SAVE, such aliens continue to receive benefits unless they are ultimately proved to be ineligible; under a work authorization card system, delays for secondary checks could cost work-authorized immigrants their jobs.

In addition, there is substantial evidence that INS data management is not up to the task of integration with a national ID system. A recent GAO study of INS information management highlights severe problems, including inaccurate information, inadequate data verification, data entry backlogs, missing case files, and inadequate user training.²² This, as well as a recent draft management study by the GAO confirm what those of us who work with the INS have known for decades; that there are enormous bureaucratic problems within the agency which frequently prevent it from effectively performing its duties.²³ In this case, adopting a national verification system will mean that the job opportunities of literally millions of "foreign looking" persons will hinge on the ability of the INS to produce accurate data quickly. This is simply unacceptable from every standpoint.

V. CONCLUSION

Perhaps more important than any of the above arguments, the notion of "fixing" a clearly discriminatory policy with an untried and probably equally troublesome new system is offensive to those of us who warned the Congress that employer sanctions was an unworkable and dangerous public policy. NCLR sat before the immigration subcommittees in the House and Senate numerous times and predicted that sanctions would not prove to be effective, and that they would cause enormous levels of discrimination. Our objections to the policy were not heeded, and the promise that the policy would be repealed if it proved to be discriminatory has been broken. Congress has not kept faith with the Hispanic and Asian communities, even though our direct predictions have proved to be true. We are alarmed that Congress again appears to be considering a dangerous new policy initiative which we are again certain will damage the fundamental rights of our community. Last year such a proposal nearly passed over our objections. NCLR urges this Subcommittee to reject any proposal for using the social security number or any other system as a national identifier. We particularly object to such a proposal emerging in the immigration context. We further urge that the Subcommittee exercise great vigilance; proponents of such a proposal have already attempted to force it through without proper consideration. The prospect of a national ID system as an supplement to employer sanctions presents little likelihood of repairing a fundamentally flawed policy, and is enormously dangerous to communities whose rights are already being violated in the name of immigration control.

²¹ Immigration Reform: Systematic Alien Verification System Could Be Improved, U.S. General Accounting Office, September, 1987.

²² U.S. General Accounting Office, Information Management: Immigration Service Lacks Ready Access to Essential Data, September, 1990, p. 5.

²³ U.S. General Accounting Office, "Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems," Draft Report.

Gay A. Condit, California, Chairman
 Major Owens, New York
 Karen Thurman, Florida
 Lynn Woolsey, California
 (Vacancy)

Craig Thomas, Wyoming
 Ranking Minority Member
 Deana Rose-Lehtinen, Florida
 Stephen Horn, California

ONE HUNDRED THIRD CONGRESS
Congress of the United States
House of Representatives
 Information, Justice, Transportation, and Agriculture
 Subcommittee
 of the
 Committee on Government Operations
 B-349-C Rayburn House Office Building
 Washington, DC 20515

(202) 225-3741

FAX (202) 225-2445

April 8, 1992

Mr. Daniel Stein
 Executive Director,
 Federation for American Immigration Reform
 1666 Connecticut Ave, NW - Suite 400
 Washington, DC 20009

Dear Mr. Stein:

Thank you for participating in the Subcommittee's March 30 hearing on the Immigration and Naturalization Service. The record of the hearing could be very useful to the new administration in identifying necessary changes at INS, and I greatly appreciate your help.

As I stated during the hearing, I have some additional questions and would appreciate obtaining your responses:

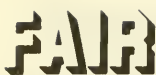
1. You recently appeared on *60 Minutes* to talk about the problem of individuals falsely claiming political asylum. There is no question that this is a serious problem; the question is how did it get so bad and in your opinion, what steps can the Federal Government take (administratively and legislatively) how do we correct it?
2. You have proposed a nation-wide birth/death registry. How will that work? What will that cost? And are you proposing INS be responsible for establishing, maintaining and updating that directory when it appears they can't adequately meet the demands of the mission they have now?
3. In your testimony at the hearing, you stated that FAIR opposed moving the Border Patrol from the INS or from the Department of Justice because you fear a disproportionate amount of attention would be focused on drug interdiction rather than border control. Do you have other objections to this sort of re-organization? If your concerns regarding drug interdiction efforts were met, and the Border Patrol was focused squarely on border control, would you favor such a move?
4. County and state jails in certain states such as California have a relatively high percentage of illegal aliens who have been imprisoned for committing felonies. In your opinion, what should be done to alleviate the costs associated with illegal criminal aliens?
5. Do you believe that the deportation process for criminal illegal aliens can be improved or changed? If so, how? If not, why not?

6. The costs associated with legal and illegal immigration place a heavy financial burden on cities, counties and states, particularly in California, Texas, Florida, New York and Illinois. Although funding has been authorized to assist these governments in the areas of criminal justice, health, education and welfare, insufficient funding has been appropriated. What, if anything, do think needs to be done at the federal level? Do you believe the lack of federal financial assistance contributes, either indirectly or directly, to ethnic tensions within communities?
7. In his testimony, Mr. Castillo recommended that a social trust fund be established to assist state and local governments with the costs associated with immigration. He suggested that a fee charged to non-immigrant visitors could finance the fund. What do you think of such an idea?

Thank you for your cooperation. If you have any questions about these questions, please feel free to contact Joe Shoemaker of the Subcommittee staff at (202) 225-3741.

Sincerely,

Gary A. Condit
Chairman



**Federation for
American
Immigration Reform**

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Daniel A. Stein, *Executive Director*

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*FAIR is a (501)(c)(3) public interest
organization working to end illegal
immigration and reduce levels of
legal immigration. Contributions
are tax-deductible.*

May 17, 1993

The Honorable Gary A. Condit, Chairman
Information, Justice, Transportation, and
Agriculture Subcommittee
Committee on Government Operations
House of Representatives
B-349-C Rayburn House Office Building
Washington, DC 20515

Dear Chairman Condit:

Thank you for the opportunity to answer your supplemental questions. I hope the following information and answers to your questions are of assistance to you and the subcommittee in your consideration of the issues addressed in your hearings.

Before I answer your specific questions, some of what has happened to our immigration policies should be examined and analyzed. For years Congress has largely ignored the issue of illegal immigration. Apprehensions of illegal immigrants, measured in thousands only a generation ago, now top a million a year, and this is why your subcommittee's hearings were so timely and important. Congress and the successive administrations have withheld adequate funding and resources from the INS.

Fine employees of the INS are asked to perform an impossible job with inadequate and deteriorating resources, while they are blamed for inadequacies and insufficiencies. Furthermore, they are given little support in their efforts to enforce the law. Many of your colleagues in Congress are quick to lay the blame on them while consistently voting against any measure that would help them become more efficient or effective.

Laws currently exist to discourage illegal immigration. Many of those laws are flouted by our own citizens. Not only is it a criminal offense for an alien to enter the United States without submitting to an immigration inspection or to make false claims of eligibility to enter the country, since passage of the Immigration Reform and Control Act of 1986 it has been illegal for employers to hire illegal aliens. Yet, many communities take actions that not only condone but encourage illegal immigration and the hiring of illegal aliens by U.S. employers. A number of communities in California are in the forefront of abetting wanton violations of law while complaining of being overwhelmed by the costs from demands on their services by illegal aliens.

For years many people, especially some employers, have advocated minimal enforcement of our immigration laws. Illegal immigration was used extensively as a means of subsidizing a number of industries, especially in states like California, contiguous to the Mexican border. What was once considered a boon to such states, now is being recognized as a serious and growing problem.

Where once it was a rare event for illegal immigrants to seek entitlements, it is now commonplace. Illegal immigration is overwhelming community services ranging from public schools to hospital emergency care in the states that once thought their cheap and unprotesting labor a boon. Now, those same states are demanding the rest of the nation bail them out with taxpayers' money after enjoying the "benefits" for so many years. The creature once so welcome is now turning on them, and all of us are now to pay for what just a few benefitted.

Symptoms of our inadequate immigration policies are pervasive. We no longer control who crosses our borders. Anyone who would do harm to our society can enter our country with impunity. Experienced immigration officers estimate that for every one illegal immigrant apprehended three to five are not. If these estimates are accurate, well more than a million illegal immigrants successfully enter the country. If only five per cent of those who are successful come with greater criminal intent, annually over 50,000 criminal aliens inflict themselves on the American people each year.

Illegal immigration comes in many guises. While most are still crossing our border with Mexico, others are landing on our sea coasts from "mother ships" operated by highly organized criminal smuggling operations. Some enter the U.S. as nonimmigrants and stay longer than permitted and violate the conditions of their nonimmigrant status. Many, as you have recognized, are coming to our airports of entry around the country, holding themselves out to be fleeing persecution in their home countries. All these situations must be addressed, but since no law is self enforcing, the INS must be provided with adequate staff and resources.

The following points respond to your specific questions.

1. Political asylum has become an opportunity for fraud for several reasons. When asylum was codified into the law in 1980, it extensively encouraged and expanded opportunities for litigation against the government. Through costly litigation, the government's ability to exercise its discretion in cases of dubious claims has been severely hampered and limited. Policy, much of it established as a consequence of litigation, has expanded consideration for asylum to virtually anyone who requests it. Even the most frivolous, often false claims must be given full consideration under current policy. Every claimant, no matter how obviously frivolous or unworthy now must be granted a hearing before either an asylum examiner or a special inquiry officer.

The number of asylum claims have grown from around 5,000 in 1980 to more than 100,000 in 1992. Delays in adjudications and adjudication backlogs have been caused by the huge volumes of cases. All aliens making requests for asylum are assured of years of delays in reaching final decisions in their cases. Well over half of the aliens scheduled for hearing don't appear because their cases are unworthy of consideration, and it is to their advantage not to appear. It is well known that the INS lacks the resources to hunt them down, and if they do get caught, it is a rare event that they will not be able to reopen their cases and have hearings scheduled again far off in the future. Because the delays are so long, the government allows aliens awaiting adjudication to work. Work authorization is the ultimate and only goal of a high number of asylum claimants. Aliens seeking to enter the United States for economic reasons find there is no risk in making spurious claims, especially since there is absolute assurance of a reward of being allowed to remain in the U.S. and obtain employment and other benefits indefinitely.

Legislation limiting eligibility for asylum to those truly and demonstrably in absolute need for it is essential. The legislation should prohibit the granting of asylum to any alien trying to enter the United States from a third safe-haven country. Any alien who attempts to enter the U.S. without identifying documentation or with false documentation should, in most cases be ineligible for asylum. Any alien who illegally enters the U.S. through illegally entering from a contiguous country should be prohibited from receiving asylum (they can apply at a port of entry for asylum or seek refugee status at an American embassy or consulate). The ability to jump to the head of the line by setting foot on U.S. soil must be eliminated.

Accelerated exclusion and deportation proceedings are necessary to eliminate the incentive to attempt entry with fraudulent documents or after destroying or losing documents while enroute to the U.S.

2. In this day of information automation, a nation-wide birth/death registry does not have to have a physical location. All states have bureaus or departments of vital statistics which collect records on all births and deaths in their jurisdictions. All use automated data bases to index the information they are accumulating. Access to the automated indices is all that would be necessary to establish a nation-wide birth/death registry.

It would probably make a lot of sense to make the registry access an inter-agency project. Not only would it be of benefit to the INS to enforce the immigration laws, but it would probably be of at least as great a benefit to the Social Security Administration to minimize fraudulent claims and payments to deceased or fictitious claimants. Other government agencies, such as the IRS would gain some benefit from such a system as well to minimize fraud in their programs.

Since the base systems already exist, costs would be minimal and limited to setting up the links to the various agencies. Savings from the fraud prevented would surpass, by far, the costs of establishing and operating the system.

3. The Border Patrol is the uniformed enforcement arm of the INS. Historically, it was established in 1924 for the purpose of enforcing the immigration law that was passed in that year. The current immigration law is a direct successor to the 1924 Act. A uniformed immigration enforcement body is as necessary today as it was in 1924.

Removing the Border Patrol from the INS and/or the Department of Justice would run the risk of shifting its emphasis away from immigration enforcement to customs and substance enforcement. Changing enforcement emphasis from people to commodities would be a tragic mistake. It would risk worsening the problem of illegal immigration while contributing little or nothing to controlling the smuggling of substances. The INS must control the priorities of immigration enforcement for it to be effective. If the Border Patrol were removed from the INS, in all probability INS would soon be re-inventing the Border Patrol for immigration enforcement. That would be wasteful and needless redundancy.

4. While the proportion of criminal aliens to the overall numbers of illegal immigrants probably is small, it also probably remains relatively constant. As the numbers of illegal immigrants go up, the numbers of criminal aliens go up proportionately. Therefore, the real solution to reducing the impact of criminal aliens is to adequately address the problem of illegal immigration.

Deporting criminal aliens in lieu of incarceration is certainly no solution while illegal immigration remains so out of control. Criminal aliens would welcome the early release, and most would soon return to the country that treated their crimes so lightly.

Proposals have been made to send them back to their home countries to continue their incarceration there. In order for that to work, many obstacles would have to be surmounted. Not the least of those obstacles is the Constitution. Could the constitutional protections guaranteed all who are prosecuted in our courts be assured those being detained in other countries? Another problem, obviously, would be the difficulties in negotiating diplomatic agreements regarding incarceration and enforcing them.

If our states are really concerned about the costs of incarcerating criminal aliens, they should be encouraged to cooperate with the INS and demand better enforcement of our immigration laws. At this time, a number of states, including California, tolerate city and county ordinances prohibiting cooperation with the INS by their officials. Such behavior by government sends a message of tolerance of illegal activity and, in effect, invites criminal behavior by aliens. States and communities should look inward before seeking relief from the federal government.

5. The deportation process for criminal illegal aliens can be improved. Consideration should be given to legislation that would incorporate deportation proceedings with the criminal proceedings. In the case of aggravated felons, they are absolutely deportable.

They are not eligible to any waivers of deportability, and the law requires that they be detained until deported. The only defense issue that actually can be raised in a deportation hearing for an aggravated felon is one of identity. Since identity is the threshold issue in any criminal case, there is no reason the deportation cannot be ordered at the time of sentencing in the criminal proceeding. Perhaps criminal court judges in all jurisdictions could be designated after appropriate training to hear the deportation side of such cases and make deportation determinations. Aggravated felon aliens would be fully adjudicated, and they could be deported immediately after release from criminal custody.

6. Financial assistance from the federal government is not the answer to alleviating costs to the states. That just transfers the tax burden to other taxpayers. Again, the true answer is to stop illegal immigration. A proportion (and indications are it is a growing proportion) of illegal immigrants are going to seek to participate in welfare, education and other benefits. As the overall numbers go up, the numbers of illegal aliens using the benefits will unavoidably go up. The real answer is to control our borders and eliminate the magnets of employment, welfare and other benefits that encourage illegal immigration. Giving money to the states will do nothing to discourage the states from providing the benefits that are part of the allure to illegal immigration.

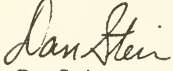
7. FAIR has long advocated charging a fee from those who use inspectional services at the border. Our proposal has been to use the fees to increase personnel at the border and improve resources and facilities to improve enforcement of immigration laws. The immigration law prohibits the entry of aliens who are likely to become public charges. Of course, this provision of law is little enforced. Immigration should not be a cost to our society. It should be a benefit to society. When immigration carries costs that are obviously burdensome, it is a symptom of something being wrong with the process.

Most legal immigration is family sponsored. The sponsoring family member should be obliged to guarantee that the alien beneficiary will not become a burden on our society by posting an adequate bond or irrevocably obligating income and property. Although sponsors are required to swear affidavits of support for their relatives, long ago courts ruled the affidavits unenforceable. Congress never responded to the invalidation of the affidavits with corrective legislation. Corrective legislation is long overdue. Rather than imposing fees on disinterested people, all sponsors of legal immigrants should be made fully responsible for those they bring to this country, and the obligation should run until their sponsorship beneficiaries become citizens.

Mr. Castillo's proposal would not only be unfair, but it would further increase the incentive for aliens to illegally enter the country. Funding programs earmarked for aliens would be an even greater magnet that would further contribute to immigration problems already out of control.

Again, Mr. Chairman, thank you for this opportunity. Anytime we can be of assistance to you or the subcommittee, please feel free to call on us.

Sincerely,

A handwritten signature in cursive script that reads "Dan Stein". The signature is written in dark ink and is positioned above the printed name.

Dan Stein

CRAIG THOMAS
WYOMING AT LARGE

WASHINGTON OFFICE
LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-5001
(202) 225-2311

Congress of the United States
House of Representatives
Washington, DC 20515-5001

May 25, 1993

Chris Sale
Acting Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

Dear Ms. Sale:

On March 30, 1993, the Information, Justice, Transportation, and Agriculture Subcommittee of the Committee on Government Operations held a hearing on management practices at the Immigration and Naturalization Service (INS). Several questions were raised concerning the number of immigrants entering the United States each year and how many are applying for asylum.

We would greatly appreciate it if the INS could provide us with the answers to a number of questions. Specifically:

1. By year, what are the precise numbers for legal and illegal immigration into the United States over the last five years?
2. By year, how many aliens entering the United States have applied for asylum in the last five years? Of this number, by year, how many have been granted asylum?
3. By year, how many aliens appeared at their asylum hearing when it was scheduled in the last five years?

Your attention to this request is appreciated. As you know, the subcommittee plans to continue its examination of INS and this information will be beneficial to that work.

Thanks again for your consideration of this matter. We look forward to your response.

Sincerely,

Craig Thomas

Craig Thomas
Member of Congress

Stephen Horn

Stephen Horn
Member of Congress



298

3 9999 05982 457 1



U.S. Department of Justice
Immigration and Naturalization Service

Office of the Commissioner

425 Eye Street N.W.
Washington, D.C. 20536

CO 703.1907

JUL 15 1993

The Honorable Craig Thomas
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Thomas:

Thank you for your letter of May 25, co-signed by Congressman Stephen Horn requesting information relating to immigration statistics over the past 5 years.

Legal Immigration

<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
643,025	1,090,924	1,536,483	1,827,167	973,977

The figures for 1990, 1991, and 1992 include persons who gained their lawful permanent residence pursuant to the special Legalization provisions of the Immigration Reform and Control Act (IRCA) of 1986.

There are no statistics available for illegal immigration. More than three million aliens applied for lawful status through provisions of IRCA, and it is estimated that between three and five million or more undocumented aliens now reside in the United States.

Asylum Claims Filed

<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
60,736	101,679	73,637	56,310	103,964

Asylum Cases Granted

<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
5,531	6,942	4,173	2,108	3,919

Of those aliens who were called for asylum interviews before Immigration and Naturalization Service Asylum Officers during the last year, approximately 30 percent failed to show up for their interviews. The asylum cases granted represent roughly 20-30 percent of the asylum claims decided during these fiscal years.

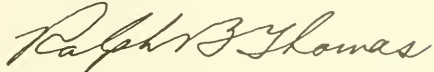
Page 2
The Honorable Craig Thomas

We cannot tell you what the comparable figure is for the hearings held by the Immigration Judges of the Executive Office for Immigration Review (EOIR). However, we would note that many self-asserted asylum applicants who are placed in exclusion or deportation proceedings but are released from custody never file asylum applications, and thus are not considered asylum applicants by EOIR.

We appreciate your interest in this matter. If we may be of assistance in the future, please do not hesitate to communicate with this office.

Sincerely,

FOR THE COMMISSIONER

A handwritten signature in cursive script, reading "Ralph B. Thomas".

Ralph B. Thomas
Acting Director
Congressional & Public Affairs



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